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Standing Committee on Administration of Justice

Estimates, Ministry of Correctional Services



Second Session, Thirty-Second Parliament

Wednesday, May 26, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, May 26, 1982

The committee met at 10:09 a.m. in room 151.
After other business:

10:28 a.m.

ESTIMATES, MINISTRY OF CORRECTIONAL SERVICES

Mr. Chairman: Now may we proceed with the estimates of the Ministry of Correctional Services? I believe the minister has a statement and the clerk will be handing out copies of the statement. Shall we commence with vote 1601?

Hon. Mr. Leluk: Mr. Chairman, I do have an opening statement.

Mr. Eakins: Mr. Chairman, will the six hours be effective as of 10:30 rather than 10?

Mr. Chairman: Yes, 10:28.

Hon. Mr. Leluk: We would not deprive the member for Victoria-Haliburton of his opportunity to bring up the Lindsay jail matter, or deprive anybody of his opportunity.

Mr. Eakins: Everybody's opportunity.

Mr. Chairman: The minister's statement will come first. I think you all have copies of that at this point.

Hon. Mr. Leluk: Mr. Chairman and honourable members of the committee, with your permission I would like to make an opening statement concerning the management of my ministry before we proceed with the debate on the votes in our estimates. I would also like to introduce the executive staff of the ministry who are with me during this presentation: to my immediate left, my deputy minister, Archie Campbell; the executive director of the planning and support services division, Michael Algar, who is out in the audience; the executive director of the community programs division, Arthur Daniels; and the executive director of the institutions division, John Duggan.

The ministry's annual report for the year ended March 31, 1981, has already been distributed to all members of the Legislature. This provides a detailed summary of each of the programs which are to be reviewed in this debate. In addition to this document, we have followed our usual practice in distributing the

ministry's briefing material for the 1982-83 estimates, the red book, to the members of this committee. On this occasion we are asking you to vote a total of \$184,679,600.

It is a scant six months since I presented the 1981-82 estimates to this committee. For this reason, and following discussion with the opposition critics, we have dispensed with the site visits that have been a feature of the review of this ministry's estimates in recent years. This will give us more time to examine some of the more serious issues confronting Ontario's corrections at this time.

10:30 a.m.

Our institutional system consists of 48 institutions and three work camps, which range from maximum security classification through to minimum security. The population pressures on this system, to which I referred in my last address, have continued unabated. We have now reached a peak at which the maximum number of inmates in our institutions and community residences at any given time is as high as 6,900 individuals. This is almost 350 in excess of the current operating capacity of our system and 950 in excess of the capacity for which the institutions were originally designed. The jails and detention centres in the greater Toronto area, on average, have been functioning in excess of operating capacity for an entire year.

I have responded to questions on this subject in the House and the entire problem has been commented upon in the media. In addition to these numerical pressures, our practice of deflecting a significant number of minor offenders requiring low levels of physical security from the institutional stream into the community under professional supervision has left us with a more difficult institutional population than at earlier times.

This increase in institutional counts, to the extent that they exceed available accommodation, notwithstanding very significant thrusts in community placement, is not peculiar to Ontario's correctional system. It is a phenomenon which is prevalent in North America and, indeed, in most countries, at least in the western world. It does, of course, continually preoccupy

the minds of ministers responsible for corrections and correctional administrators in general.

In this province we have over many years developed very effective mechanisms for community placement, and I will touch upon some of our more recent initiatives in this area later in this address. Regarding the institutions, I would like to remind this committee that this government has over a period of about 15 years followed an innovative construction program in providing modern accommodation for a larger number of offenders who must remain incarcerated for at least some part of their sentences.

In 1968 the province assumed responsibility from the local authorities for a number of aspects of the administration of justice, and this included the operation of the former county and municipal jails. Since that time the province has closed 19 old jails as well as the old section of the Toronto Jail. It has replaced them with nine modern detention centres. In addition to that, the province has closed a number of old longer-stay correctional centres and work camps, including the Burwash Correctional Centre near Sudbury and the old Mercer Reformatory for Women in Toronto. It has replaced them with new facilities, including the Maplehurst Correctional Centre at Milton and the Vanier Centre for Women and the Ontario Correctional Institute at Brampton.

Each of these new detention centres and correctional institutions provide adequate living accommodation. They also have accommodation for rehabilitative activities, which often include gymnasiums, educational and trades training facilities. Working space is also available to professional staff, lawyers, chaplains and volunteers from the community.

I am sure you will agree that this past performance, first initiated by one of my predecessors, the Honourable Allan Grossman, was both laudable and courageous. However, a number of older institutions still remain and, as I have noted, population pressures have increased dramatically. The economic climate in Canada and in most countries of the western world has deteriorated since the period in which we were able to mount our extensive construction program.

We have now reached the situation where it would cost well in excess of \$100,000 per bed for maximum security facilities to continue with this program in a time of extreme fiscal constraint. For this reason, we have been examining a number of alternatives as means of overcom-

ing our problems both on a short- and a long-term basis, but not necessarily in the most attractive manner. I would like to share the results of our recent deliberations with you.

Our programs for community placement of offenders, including the establishment of some 480 beds in community residences, have reduced the pressure on minimum security institutions. Because they were no longer fully utilized and were not amenable to upgrading in terms of security, we were able to close Brampton and Glendale Adult Training Centres.

We are now engaged in a program to increase the security level of other institutions. We have erected a security fence at the Mimico Correctional Centre to upgrade the facility to medium security. We are also expanding the kitchen and dining areas as well as the recreation and administration facilities. This initiative will provide for 150 more selected inmates.

We have begun construction of a new detention unit at the Millbrook Correctional Centre to increase segregation and close confinement accommodation. Similarly, at the Quinte Detention Centre, we have begun construction of additional segregation and close confinement cells.

In times of peak populations at the Guelph Correctional Centre, we provide 45 additional dormitory beds to relieve pressures. One floor of the Hamilton Detention Centre had not been used since the institution was opened and we have now arranged to utilize this capacity. This will accommodate 60 more inmates and an additional 23 staff members have been made available to supervise this floor.

We are fortunate that a number of our modern facilities, particularly the two new detention centres in Metropolitan Toronto and those at Hamilton and London, were designed in such a way that their capacity could be increased quite readily. We have already taken some advantage of this built-in flexibility and are continuing to explore ways in which additional available space in our institutions can be used. In this review, we are particularly mindful of the need to maintain an acceptable standard of living and working space for both inmates and staff.

At present, we are developing the prototype of an inexpensive relocatable building which has already been designed. We believe this could be constructed largely by inmate labour in our own institutions at Guelph and Millbrook. If this prototype proves to be successful, it will provide a means of housing additional inmates

in a number of institutions, especially the smaller jails which remain scattered around the province.

I am now examining with my officials the feasibility of putting additional buildings on available sites. We are also considering expanding a number of existing institutions by providing additional living accommodation and associated programming facilities. This is an option which, while it has the unattractive element of increasing the number of inmates in one location, does have the advantage of reducing construction costs and maintaining suitable living standards for inmates and working conditions for staff. I recognize that expanding the size of our institutions will require additional staff and funds to cover the additional operating expenses.

I would also inform the committee that we have carefully examined the feasibility of using a number of available public buildings in the province, including schools and hospital-type institutions, but have not yet found any accommodation suitable to our needs. During the course of this review we carefully examined the concept of constructing work camps for inmates in remote locations. We have decided this does not present a feasible option. They would be quite economical to build and remoteness does in itself present a measure of security, but there are a number of significant disadvantages.

Past experience at Burwash Correctional Centre and elsewhere has shown us this type of accommodation is not appropriate for inmates from urban centres and for hard-to-manage offenders. Furthermore, staffing in remote institutions would present an extremely difficult problem. Transportation costs for staff and inmates and the costs of shipping supplies would be prohibitive. We also believe such camps would accomplish little in terms of rehabilitation and reintegration within society and that very little productive work would be available for inmates in these locations.

The deliberations related to our population difficulties will continue and it will be my pleasure to announce further initiatives at the appropriate time.

I believe this is a suitable time to draw to your attention the latest Ombudsman's report, dated May 25, 1981. The Ombudsman referred to the correctional report published by his office in 1977, which dealt at length with accommodation and population pressures. The report contained a total of 138 recommendations, of which 105 dealt with specific institutions and 35 cov-

ered the broader aspects of the provincial correctional system. Many of these recommendations dealt specifically with the subject of overcrowding.

The Ombudsman goes on to describe the ministry's response to a number of the recommendations and states as follows: "I wish to conclude that I am satisfied with the efforts taken by the Ministry of Correctional Services on these recommendations."

10:40 a.m.

Given all of these circumstances and the prevailing fiscal climate, I believe it is particularly important that we operate our institutions as economically as possible. I am pleased to say we are continuing to expand our cost reduction programs in foodstuffs and in energy consumption.

Last December I advised you we had produced vegetables, eggs, meat and poultry products for the year with a wholesale value of \$460,000. This represented a saving of over \$100,000 to the taxpayers of this province. We are expanding upon this production in the coming season and are looking at ways we can use this extra produce through canning and cold storage and by improving distribution systems to all of our institutions.

Our energy management program, which has been in operation for five years, has now resulted in a cumulative cost avoidance of over \$2 million. We continue with our concerted efforts to reduce amounts of energy consumed by our institutions. In addition to this, we are continuing to explore alternative energy sources, including the use of readily available wood as fuel.

Examples of our various cost avoidance programs are numerous. I would like to mention the Rideau Correctional Centre where piggery and poultry operations have been initiated. The eggs provide 60 per cent and the pork operation satisfies 30 per cent of the needs in the eastern region.

In the northern region the Monteith Correctional Centre continues to expand its food production. It is notable that it is utilizing horses as an energy conservation measure. Monteith continues to produce lumber in its portable sawmill. Using local poplar lumber, it manufactured some 2,000 vegetable crates last year for use in farming operations throughout the ministry.

As an energy conservation project, this facility was able to cut and use 400 cords of firewood last year for heating its greenhouse and piggery.

The surplus was used to assist needy senior citizens in the area. In addition, the mill has produced some 40,000 board feet of lumber for its own use. The ministry is now considering making wood pallets at Monteith for use in all of our institutions.

At Guelph Correctional Centre we expect to install a large solar heating system by the summer, following a detailed assessment of a successful installation at the Ontario Correctional Institute in Brampton.

The community assistance programs in our institutions will continue to expand. I would like to draw your attention particularly to the activities of the Whitby Jail where inmate work crews have been working in the Darlington Provincial Park cleaning up and maintaining camp sites and planting trees.

Inmates of the Ottawa-Carleton Detention Centre donated their labour for renovating Kirkpatrick House, a halfway house operated by the John Howard Society. Inmates at Ottawa-Carleton have also donated their labour to the city of Gloucester for cleanup work and landscaping. The inmate work group from this institution also provides maintenance services to local school boards. Inmates at the Millbrook Correctional Centre were involved in snow removal last winter and in other assignments to help our senior citizens.

Under our temporary absence programs, volunteer inmates from various institutions continue to provide assistance to the elderly and to the physically and mentally handicapped. Last year I mentioned our work at the Brockville Psychiatric Hospital and the Rideau Regional Centre at Smiths Falls. I would like to mention again the Monteith Correctional Centre where inmates are assisting the Northwood crippled children horseback riding program.

At the Thunder Bay Correctional Centre inmates provided over \$25,000 worth of labour to assist the Canada Games. As part of this assistance, they constructed 500 bunk beds and some of the spectators' stands. They also provided extensive assistance to the ski-jump competitions.

We continue to expand upon our cottage industry-type of industrial programs. Particularly notable is the Vanier Centre for Women where inmates are inspecting and packaging materials for the Rubbermaid Company, while others assemble eye makeup mirrors. At Elgin-Middlesex Detention Centre, the inmates are involved in metal salvage, assembling telephones and packing sewing supplies. In the past year

the programs at these two institutions have provided \$20,000 in revenues, as well as work to inmates and labour to industry.

I think that this is an appropriate time to describe our inmate classification and transfer section. This group has a field staff of 13 bailiffs and a fleet of five secure vehicles equipped with mobile radios and telephones. Last year we established the position of provincial co-ordinator of classification and introduced an improved system for classifying inmates. The section is responsible for classifying and transferring inmates to our long-stay institutions. It is also responsible for liaising on behalf of this province with the government of Canada on the transfer of prisoners between Canada and the United States and Mexico.

We continue to negotiate with the government of Canada over rationalizing delivery service so as to eliminate, where possible, the duplication of service which exists between provincial correctional systems and the federal penitentiary system. It has been the belief of the ministers responsible for corrections and correctional administrators that overlap of services can be reduced by using exchange of service agreements. We are continuing to negotiate a master agreement with the government of Canada. In particular, we are negotiating a specialized agreement under which federal female offenders from Ontario who are now in the prison for women can be provided with accommodation at the Vanier Centre for Women at Brampton.

In another initiative, in co-operation with the Correctional Service of Canada, we have developed a program for penitentiary placement. Previously, inmates were transferred from the province's jails and detention centres to the Kingston regional reception centre and then dispersed from there to various penitentiaries. The program now permits national parole officers to assess individuals sentenced to federal penitentiaries while they are being held in our jails and detention centres. After assessment, the inmate classification and transfer section arranges for the inmates to be delivered to the appropriate federal institution.

I would now like to describe some of the new initiatives which have taken place in our community programs division. This division is committed to a comprehensive planning model, which involves long and short-term planning, utilizing ministry and community resources coupled with detailed results evaluation. These models provide assistance and consultation to

local managers in developing new and innovative community-based programs. These models are considered to be among the most highly developed community-involved programs in Ontario.

The programs provide alternatives to incarceration and encourage a broader involvement of the private sector and the community generally in delivering rehabilitative services to offenders and to the victims of criminal activity.

The committee will understand that an increasing work load and the extensive utilization of private agencies in the community emphasizes the importance of program review and results measurement. This is a major activity which must involve the professional staff of the division, together with the audit and inspection functions of the ministry. As an example of this process, the ministry has initiated a policy and program analysis of the provincial pre-trial programs provided by this ministry. This analysis is designed to review the results that have been achieved to date.

The primary research methods to be used will include a literature review, an analysis of documents associated with this activity. We will also conduct a series of onsite observations and personal interviews with our staff and the staff of agencies providing the service.

The work load of the probation and parole branch continues to increase. The total number of offenders under supervision increased from 65,000 in 1980-81 to over 68,000 in 1981-82. The total number of persons on probation supervised on any one day is now over 34,000 and the number supervised on parole is approximately 1,200. The service continues to expand its programs. New initiatives include substance abuse programs, victim-offender reconciliation, restitution, crime prevention, psychiatric and psychological services, bail verification and supervision, and our extremely important public education activities.

10:50 a.m.

We continue to expand the very important programs which are directed towards native offenders, especially through liaison in consultation with native self-help groups.

We are continuing to develop the fine option program designed to assist minor offenders in remaining out of jail and to alleviate the pressures on the jail populations. These programs allow fine defaulters to satisfy their penalties with community work in lieu of incarceration. Following work with the Ministry of the Attorney General to establish regulations, pilot pro-

jects will be established, monitored and expanded as appropriate.

Our pre-trial services are also designed to assist offenders and reduce the number of persons remanded in custody. Programs have been set up in a number of cities to provide means of selecting suitable candidates for bail. Such programs offer supervision for those candidates who might otherwise have been detained in custody.

Among the numerous local programs I would like to mention is the shoplifters' program at Brampton. Here the local Elizabeth Fry Society provides a program specifically designed to help largely female offenders convicted of shoplifting. Seen as a preventive program, it deals with the younger population by providing schools with educational materials and maintains liaison with the local business community. For more mature offenders, it provides a series of 12 weekly group sessions as well as individual counselling.

In London specific programs are offered to combat domestic violence. Directed towards men who abuse wives and girl friends, this program was initiated following research by the London Co-ordinating Committee on Family Violence. It provides training and a constructive milieu in which couples can work through problems in a peaceful fashion.

The "tough love" program in Brantford provides help for the troubled parents of offenders. Parents are urged to encourage their teenage children to accept responsibility for their own actions. It involves probation and parole officers in supervising offenders who have conditions relating to place of residence, curfew and other stipulations in probation orders.

The Frontenac impaired drivers' program is operated jointly by the Kingston Psychiatric Hospital and the Alcoholism and Drug Addiction Research Foundation. This program is provided for individuals convicted of impaired driving. It emphasizes education rather than treatment and demonstrates that early intervention can be effective and can reduce the incidence of impaired driving.

Job search and training programs are provided in a number of centres, including Hamilton, Ottawa and Kingston. In Kingston the Help program administered by Frontier College provides assistance to inmates, parolees and probationers who are given individual help with their employment problems.

In Rexdale the ministry is operating a victim-witness assistance program in co-operation with

the Salvation Army and the Metropolitan Toronto police. This program operates around the clock and in the past year it has assisted 400 people who were victims of crime. Utilizing volunteers, this program responded to 200 police requests during that time and relieved pressure on the police force. Most important, it provided a human service to totally innocent individuals who required support and care during a period of personal crisis.

Last year nearly 400,000 hours of work, having an estimated value of over \$2 million, was provided by 9,000 probationers under our community service orders. Half of this work was directed towards senior citizens, the handicapped and children. One out of five offenders, or 20 per cent, did more work than the court orders required. The ministry also supervised collection of \$2 million from 11,000 probationers who were ordered to pay restitution to their victims.

The community programs division operates 32 community resource centres. This includes a bush camp in northern Ontario operated under contract by the Red Lake Indian Friendship Centre. It is one of several designed specifically for native offenders.

We also operate a bilingual community resource centre in the Ottawa area. I am pleased to announce that we have negotiated the opening of a community resource centre in Toronto specifically designed to deal with the problems of physically and mentally handicapped offenders. This is the first such community correctional centre to be operated anywhere in Canada. The ministry expects to open three more centres this year.

In addition to this structure, the ministry has contracted for an average of 55 additional beds with 21 community agencies which operate halfway houses. Fourteen of these houses provide accommodation for female offenders. We also have a contract with a halfway house which offers services to both male and female native offenders with alcohol-related problems.

The ministry has developed a number of enrichment programs with the operators of the community residential centres. Some centres now offer specialized and extended services to residents and ex-residents in the areas of alcohol-drug education, life skills and general aftercare services. One example is the Durhamcrest Community Resource Centre in Oshawa. This centre bases its enrichment activities around volunteers. Residents are involved in work for the Durham Board of Education, for Cheshire homes,

a home for the elderly and various other community care agencies.

For the residents, the house provides Alcoholics Anonymous meetings, St. John Ambulance training, volunteer interviews and weightlifting. Credit counselling and job search packages are available, as are cooking classes for single men and life skills programs. Recreational programs include woodworking activities, a darts club and film nights featuring library films.

Another of many examples is Madeira House in Toronto, which provides an aftercare support service to residents and ex-residents alike. The Seventh Step program has been most beneficial, and the house provides a spectrum of services, including employer contact, accommodation assistance and references to social agencies. It also provides impaired driver courses, contacts with the families of offenders and personal counselling. The residents volunteer their services to the community for a number of projects co-ordinated through LAMP, the Lakeshore area multiservices project.

The community programs division recognizes the need to generally upgrade and maintain the professional competence of staff members. It offers a number of professional courses and has developed management development programs. It is offering seminars in various locations to suit individual developmental needs.

I would like to draw to your attention a new annual journal, entitled *Correctional Options*, which was first published by the division in 1981. This journal represents the efforts of staff from all branches of the ministry who are working to develop new approaches in the management of offenders. Over 5,000 copies of the first edition were distributed to a wide readership in the criminal justice field, including interested persons across Canada, the United States, Great Britain, Sweden, The Netherlands, New Zealand and Japan. The second edition will be published next July.

An important aspect of my portfolio is responsibility for the Ontario Board of Parole. This board exercises jurisdiction over all persons sentenced to provincial institutions. It operates under a memorandum of understanding and an administrative agreement with the ministry. During the course of the past year this board underwent a significant reorganization in its structure and, as a result, the resources within the chairman's office have been increased.

The first policy and procedures manual for the board is now being printed and will be distributed widely within the province and else-

where. In 1981-82 the board considered 9,661 cases and held 762 hearings at the institutions. Parole was granted to 2,259 inmates, and 68 per cent of these successfully completed their parole.

Faced with the pressure on our institutional capacity and on our community programs, as well as the pressure on our economic resources, it is particularly important that our programs be as effective as possible.

11 a.m.

Our concern does, of course, extend beyond our primary objective of public protection. Many different types of rehabilitative programs have been attempted over the years in different parts of the world, and it has been our particular concern to find the programs which appear to reduce recidivism. There has been a belief that nothing works, but our research indicates to us that certain programs are more successful than others and that some very effective correctional models do exist.

Certainly my predecessors and our staff have maintained the position that the number of individuals who are given additional terms of incarceration can be reduced. We believe there must be a genuine acceptance of responsibility on the part of the offender. This is the keystone of all effective rehabilitative programs.

The bulk of the research has shown that chronic offenders differ from the general population in several ways in which they think. One model of crime and delinquency suggests that criminal behaviour may be associated with delays in acquiring a number of life skills that are essential to living in society. Many offenders lack self-control and fail to regulate their own behaviour. They tend to act impulsively, they have not learned to delay seeking rewards, and frequently they lack the ability to understand the viewpoints of others. We also understand that offenders are not a homogeneous group. We need a workable classification system and a series of different treatment models to suit different individuals.

It must be recognized, in discussing recidivism and programs to reduce failure rates within the institution populations, that offenders have in many cases already come in contact with community programs and have, generally speaking, failed in terms of those programs. We know there can be considerable success. We find, for example, that there have been fairly low reconviction rates, 35 per cent over two years, for persons admitted to the Vanier Centre for Women. We find extremely low failure rates for inmates in our institutions who are engaged in

temporary absence programs combined with employment or full-time education.

Our community resource centre programs result in an encouraging 78 per cent success rate. Eighty per cent of offenders successfully complete their terms of probation. For instance, the community service order program shows an 88 per cent success rate in a one-year follow-up study. It is particularly important for us to continue finding programs which, where possible, help offenders in maintaining their links with the community.

As part of our ongoing concern about this spectrum of problems, I would advise you that the ministry is negotiating with Dr. Robert Ross of the department of criminology of the University of Ottawa for a research project into the effect of lack of understanding the needs of others and lack of self-control, impulsive behaviour and so on on our inmate population. This is one of a long series of research projects into this and allied subjects. The committee may wish to discuss this subject further later on in the debate with Dr. Andy Birkenmayer, our manager of research services, who is present and at your disposal.

I would like to draw to the committee's attention two very significant conferences sponsored by this ministry which will be held in Toronto during the summer. The International Halfway House Association will be holding its third international conference, entitled *Stigma* 1982, between August 10 and 13 in Toronto. It is sponsored by the Correctional Service of Canada and my ministry in co-operation with a number of community organizations in Canada and the United States. We are expecting some 400 people to attend this very important conference.

The American Correctional Association is holding its 112th annual Congress of Corrections in Toronto between August 15 and 19. It is expected that some 3,500 people from all over the world will attend this conference, which is being held in a number of major hotels.

Many staff members of the ministry have been involved with the American Correctional Association and with their colleagues in the Correctional Service of Canada in developing the very innovative program. The theme of the congress is entitled *The Universal Challenge—Reducing Human and Economic Costs*. The goals are designed to reflect those issues and concerns which confront correctional workers in striving to better the correctional justice system on the North American continent.

This congress is the single most important annual event for individuals concerned with corrections. I would strongly urge as many members of this committee as possible to attend at least some of the sessions, and I would be very pleased to assist the members in registering for this event.

I do have a very deep personal interest in the activities of individuals who volunteer their time and, frequently, other resources to the betterment of the quality of life in this province. Particularly, I wish to draw to your attention the 7,000 citizens who are working with the ministry and its associated private agencies in an impressive spectrum of services to inmates, probationers and others in conflict with the law. These dedicated individuals are an invaluable resource to the ministry and to those with whom they work.

Volunteers, by their very act of volunteering, can offer the concrete support and encouragement that has so often been lacking in the lives of many offenders. Citizens who are not part of the correctional process itself can often readily relate to offenders. It has been my pleasure in the last year to present 56 community service awards to individual volunteers in recognition of their outstanding services to our institutional programs.

This ministry has a staff of 5,571 people who are dealing with an average of some 6,000 inmates and some 35,000 probationers and parolees on any given day. Included in our staff are 466 female line correctional officers and probation officers. Corrections is a difficult and challenging field, and it is obvious that some untoward incidents will occur from time to time. Inevitably, these incidents are often reported in the media, and this sometimes overshadows the very good work that is performed day in and day out, seven days a week, 365 days a year, by the overwhelming majority of our staff.

I am quite aware that the population pressures in our institutions and the high case loads which our probation officers must supervise present increasing difficulties. These challenges will continue to be met with the professionalism, dedication and concern which our staff have shown in the past.

The current economic climate at times intensifies the personal difficulties our staff members face, and public statements associated with salary negotiations tend to occupy a more dominant place in the media than in previous years. On occasion, these public pronouncements overemphasize some of the differences of

opinion between management and labour which must inevitably occur.

I do wish to emphasize that the vast majority of our employees are hard-working and caring people who are well trained, experienced and frequently extremely well educated. They are dedicated to an avocation which is frustrating and in which there can be many disappointments. I think it only right that I bring this dedication to the attention of the committee and that I commend them to you and to all the citizens of Ontario for their very important contribution to the quality of life in this province. I particularly wish to express my sincere thanks and appreciation to them for their efforts over the past year. I also wish to assure them that I have every confidence in their ability to meet the challenges of the future.

Mr. Chairman: Thank you, Mr. Minister. Mr. Spensieri, do you have any comments?

Mr. Spensieri: As opposition critic, I take pleasure in participating in these estimates and also in noting that for the second year in a row our minister is with us. This is an unusual turn of events in this ministry which, as the chairman may know, has had in the past 13 years almost as many ministers. It is certainly encouraging to see that perhaps in this Parliament one minister will live out its current term.

I would also like to thank the deputy minister, Mr. Campbell, and all the staff for their co-operation throughout the year, and in particular for setting up an institution of sorts, if I may use the word, the pre-estimates luncheon meeting at La Scala restaurant to discuss the agenda for these estimates. It is certainly an institution I endorse, and I think it is indicative of the degree of co-operation which we have come to note and expect from this ministry.

Having said this, I would like to reply to the minister's statement, first, by a few general comments as to trends which we in the opposition perceive within the ministry, then by dealing with some specific issues and, lastly, by reserving some time to comment upon each vote item.

11:10 a.m.

The first and major trend which has been brought out by the minister's statement, the trend which was pointed out in previous estimates, is really the trend away from incarceration, the plethora of programs which have come to pass that are intended to make incarceration only a last resort. I think very few persons involved in the corrections field would doubt

the wisdom of this approach, and certainly we would endorse the expansion of non-incarceration programs, the community resource centres, the temporary absence program and so on.

The question which we must pose to ourselves in this committee in particular, however, is whether the proliferation of these programs is brought about by a bona fide philosophy of corrections, by a bona fide belief that they are desirable and ultimately that they will serve the inmates and the offender population better, or by the constraints, by the public pressure and by the scant allocation of funds to this ministry which has traditionally not been a high priority item with this government.

When we note that the increase in inmate population in Metro alone is in excess of 13 per cent, when we note that there is only a six per cent increase in the budgetary items for capital construction, one must wonder to what extent the ministry has succumbed to various non-incarceration programs simply as a means of avoiding the ultimate problem which it must face, which is the need for more capital construction.

I would have hoped that in his statement the minister would have pointed out some concrete plans for capital construction. As the minister very well knows, it takes five years for an institution to come on stream, and if we are looking towards the 1990s, I would have thought that some concrete construction program would have been announced.

We note, of course, that it is difficult to construct detention centres. We note the cost of \$100,000 per bed as a capital cost. However, it seems to us that this figure is really intended for a maximum security institution and that since 50 per cent of the detainees in our institutions are there for less than a 30-day period, it would seem to us that the greater need is for minimum security or medium security institutions, and certainly these would not bear the \$100,000 per bed capital cost which the ministry seems to flaunt about when attempting to explain its inaction in the capital construction field.

I am heartened to see that the ministry has now looked for alternatives. I do not think it has explored alternatives. I think there are portable accommodations already available which have been in experimental use in the United States and in Canada. I believe that in the Toronto Jail, for instance, there are existing facilities in the current exercise yard which would permit the erection of minimum or medium security portable accommodation and would at least fill the

gap in the five-year period it takes for an institution to come on stream.

We also note that there has not been enough effort made by this ministry to contact community institutions or their managers with a view to contracting out or leasing public buildings, such as empty schools, which now certainly abound within the public school system in Metro. These could easily be converted to medium security institutions and could serve in the interim.

We also note that the permissive legislation which the Minister of Municipal Affairs and Housing (Mr. Bennett) promised us, which would permit the creation of institutions within existing zoning restrictive bylaws of the municipalities, has not been pushed through the Ontario Municipal Board. We would ask what steps the ministry will be taking to co-ordinate efforts with that ministry to ensure that the OMB approves the permissive legislation to permit these types of facilities, particularly in Metro.

Mention has been made of the congress which will take place this summer. I will wager that under no circumstances will the congress tour the Toronto Jail facilities. They will confine themselves to perhaps Metro east and Metro west. In summary, the time has come to lay some concrete proposals for a Metro north or a Metro south jail. Toronto Jail really ought to be made the showpiece or the model for detention facilities.

The second trend I have seen and noted in my second term as critic for this ministry appears to be what I call the user-pay mentality. There have been attempts, as has been most notably reported in the Casserly case, to extract funds and payments for food and lodging for those serving intermittent sentences.

There is absolutely nothing wrong with the user-pay mentality. I believe it ought to be expanded. What does become wrong with it, as the court found in this case, is when the ability to pay or to come up with the funds to repay the ministry for food and lodging becomes the criteria upon which release is granted.

The court properly found the ministry had overstepped its boundaries by making ability to pay the criteria for remission of sentence time. It thereby vitiated a very fundamental concept of justice in our system, which is, basically, that the remission time is based on good conduct and co-operation within the confines of our institutions and not on ability to pay.

Having said that, I think it is important to note that ability to pay should become a factor within our correctional system. The Ministry of Cor-

rectional Services has stated time and time again the horrible financial constraints under which it operates, and yet it seems to me it is missing opportunities for user payment at every turn.

When one considers, for instance, that the processing fees and the administrative charges for temporary absence programs are great and put tremendous burdens on the system, when one considers that every program which the ministry makes available for betterment of the conditions for the detainees involves some cost to the ministry, one must, I submit, look very carefully at the ability to pay.

It should perhaps adopt a system similar to our Ontario legal aid plan whereby the overall concept is that no one is denied legal aid, just as no one should be denied the opportunity to participate in programs, but costs ought to be recouped, wherever possible, by a lien program similar to our legal aid system. I am sure, Mr. Chairman, you are well aware of the ability of the legal aid plan to extract funds in futuro from people who receive the benefit of legal aid.

Perhaps some system ought to be devised, such as an agreement or a lien or some enforceable contract, whereby the detainee who comes to take advantage of programs intended for his benefit would then be in an enforceable position to repay the ministry for the costs of having engaged in that program. I just toss this out as an opportunity for the ministry to consider. It has always been my role, and I believe it has been echoed by Mr. Renwick for the NDP, that in these types of ministries and in this type of justice committee we ought to be constructive and try to fine-tune the system, rather than being partisan.

The other trend I see happening, and I am glad there was a write-up on it in this Sunday's Star, is the victim-offender reconciliation program. I believe the ministry has taken a very desirable step. However, it does not go far enough. In a riding such as mine, an urban riding in the Jane and Finch area in Yorkview, we have a great deal of crime involving the violation of property rights and sometimes the violation of the person's rights.

I think it would be of tremendous assistance in providing acceptability of our correctional system, if the victim were to be involved. Let me just point out some possible steps. As we noted last year at the October 14 conference on the victims of crime which this Legislature sponsored, it is possible through our system of corrections for a person whose home has been

burglarized to be kept informed of the progress of the offender, to have face-to-face interviews at some point with the victim and to give the victim the opportunity to feel justice is being done.

11:20 a.m.

We should not restrict the victim-offender program simply as an aid to restitution. That is what is being done now. In other words, we are saying, "Fine, we are going to have restitution, and to assist in restitution we are going to involve the victim and the offender." We should be saying, "The involvement of the victim in appropriate cases ought to be a major effort of this ministry."

The next one we find rather disturbing is the delegation—I touched upon this last year but it has become even more rampant and runaway now—to agencies, groups and societies through the contract route of the ministry functions. We realize subsection 8(2) of the governing act permits the delegation and the contracting of ministry functions. However, we perceive an abuse of subsection 8(2) because we find there is unequal treatment of the same kind of offender by different agencies and societies. There is a lack of uniformity and lack of control by the ministry.

In 1981 this privatization, as the ministry likes to call it, cost some \$8 million. There were additional millions of dollars spent on supervising community work. There were community agency contracts of over \$6 million; community resource centres, \$4 million; Salvation Army, \$1.5 million; and probation and parole, some \$4.5 million. It seems to me that as we progress a larger and larger chunk of the ministry budget is being dedicated to the private agencies. There is an eroding of the ministry's function and there is not a proportionate allocation of funds.

If one looks at the fact that over 70 per cent of the people who come in contact with our corrections system receive less than 10 per cent of the funds, one realizes the imbalance of this system. Non-ministry organizations are being asked to take on a larger and larger chunk of the inmate population without a proportionate allocation of funding.

The other aspect we saw, and it is evolving through the various ministers' reports, is the reduction in services to inmates. The ministry is charged by the act with a duty, to quote the act for a moment, "to create a social environment in which detainees may achieve changes in attitude by providing training, treatment and services designed to afford an inmate, parolee or

probationer an opportunity for successful social and personal adjustment."

One really has to state how hollow these noble words from the statute must sound when one considers the biggest priority in most of our overcrowded institutions is just getting the meals served on time. How can one talk about providing a social and personal adjustment when the personal everyday needs of inmates cannot even be met?

We note that there is a reduction in the services being provided to people in the incarceration context. Only 4,600 people received training, while 46.5 teachers—whatever that means—and 25 trade instructors are in full-time service with the ministry. There is a constant decline and erosion in the level of actual services being provided.

The second to last thing that really struck me in my dealings with the ministry, in attempting to understand the ministry, is the military structure and the aura of secrecy which prevails throughout. In our federal prison system the court commented in the Martineau case about the degree of fairness and openness that the system must display. I am talking about areas such as inmate complaints, in-house reviews of inmate complaints, and parole applications.

It seems to me that the ministry is fostering and encouraging the military structure, the absolute power of the superintendent of each institution. It surrounds the institutions with an aura of secrecy. It denies accessibility by counsel and by interested groups. The principles which were espoused in the Martineau case, which related to the federal system, have fallen on deaf ears in the provincial system.

We are going to be seeing the introduction of the Young Offenders Act at the federal level and this, of course, has major implications for this ministry, as well as the Ministry of Community and Social Services. We would like to discuss this with the minister, and ask him what he sees as the implications for his ministry; what degree of co-ordination with the Honourable Mr. Drea, and with other ministries, he is going to implement to dovetail the provisions of the Young Offenders Act, the federal statute.

Much has been made by the minister of the degree of co-operation between his ministry and the various ministries. Yet it is indisputable that with a ministry such as Community and Social Services, which handles the youthful offender, there has been no successful degree of co-operation to date. In co-ordinating with the Attorney General (Mr. McMurtry) in the mat-

ters of pre-trial detention and other matters within the purview of the Attorney General, there has not been the degree of co-operation which one has a right to expect.

If I could just relate for a moment to the point which was very quickly skimmed over by the minister about the dispute with the correctional officers and other staff within the ministry, I do not think this is a matter which deserved as little mention as it got. It is going to be a major issue facing this ministry in the next year or year and a half.

The minister will probably have to come to grips with the serious staff disputes which are going to be brought about. They are coming about largely because the ministry has refused to address the questions of overcrowding, the questions of abysmal conditions, particularly in the Metro jails and, indeed, in 32 out of the 48 provincial correctional institutions.

The ministry can be legitimately criticized for not having provided enough staff training programs for its staff, for not having set up an academy for which the correctional officers have always argued and for which they have been clamouring for some time. This would be an academy which would provide a minimum period of some 13 weeks of training to prepare officers to engage in the so-called avocation to which the minister makes reference.

There are the legitimate demands as far as wages are concerned which have been dealt with by various commissions, the Ombudsman, the Shapiro commission, the various grand jury reports. The demands that the wages be brought to parity with those of an Ontario Provincial Police officer are probably legitimate and they are going to have to be addressed. We ask the minister what plans there are in that area.

There is going to have to be a more concerted effort to meet the needs of the staff. If one expects a job to be well done, there must be attention paid to the demands. The staff relations branch of the ministry has to be beefed up and has to be made more responsive.

The last area I wanted to touch upon before dealing with specific issues which have arisen within the year is the question of accountability. It seems that whenever a mishap occurs, such as the Christmas breakout which we had from the Toronto Jail, the public is always left to ask itself the question of accountability.

Do we blame the superintendent of that institution? Do we blame untrained and, in this case, part-time staff who were left to supervise a killer of the nature of Mr. André Hirsch? Do we

blame the minister under the concept of ministerial responsibility?

11:30 a.m.

A corollary of the military nature of this ministry is that the person in charge—the commander, the superintendent of the institution—has to be accountable in all senses if we are truly to move ahead with our military analogy. Whenever a major mishap occurs, fingers are pointed in various directions and investigations are made, but there is really no ultimate accountability. I would hope the minister would address these concerns in his reply.

With respect to specific issues which arose during the year, I have already touched upon the demands of the prison guards for fair remuneration. They have very aptly pointed it out and the press has done an admirable job of voicing their concerns.

There were headlines such as, "Jail Guards Want 43 Per Cent Raise," "Bonus for Poor Working Conditions," which highlighted the terrible working conditions in the Toronto Jail. There was the fact that correctional officers wished to rate the jail system on a scale of one to 15, rating the Toronto Jail as 15 on the scale and asking for a 43 per cent raise—what we would consider in other ministries a northern allowance, but in this case a poor-conditions allowance.

With headlines such as, "Guards Demand Better Working Terms," in the Toronto Sun of April 20, 1981, we see a real pot of turmoil boiling and I think the minister is going to have to come to grips with this issue.

The other thing the press picked up on during the year was the failure of our so-called early release program. Whenever a person receives a one-year sentence, he does not receive a one-year sentence but receives an almost automatic one-third remission.

Lawyers I have talked to—most notably Mr. Cole who was involved in the Casserly case and others—seem to point to a reluctance on the part of inmates to apply for early release when they know that if they do not apply their sentence is automatically cut by one third, that they will spend the rest of their sentence unsupervised and able to carry on in a normal fashion.

The question the opposition really has is whether the entire early release program ought to be reconsidered, whether this automatic remission of one third of the sentence ought to be discontinued and based on good conduct while under detention. The press has picked up

on this issue and perhaps this ought to be a response area for the minister.

I will not comment much on the headlines which discussed the "muzzled" aspect of people within the system. It goes back to my earlier point of the militarism and secrecy within the system, that prison officers and guards are not encouraged to speak to members of the public—and not necessarily to members of the opposition, Mr. Chairman, but to people interested in the correctional field about problems which they encounter while working in the system.

As can be seen by many reports, there has been—in the Collins Bay prison guard question with Mr. Dennison—an attempt to muzzle staff. This is not just confined to the federal system, it also comes down to the provincial system. There is an attempt by the ministry and I guess by certain officials within it, to discourage the talking out of problems as they are encountered by staff.

I also wanted to talk about the situation in Lindsay that my friend and colleague is here to talk about and I will defer that matter to him as it pertains to his riding.

I simply wanted to conclude by asking the minister to verify or deny certain evidence which has come to our attention regarding some unusual goings-on: the use, in the Elgin jail, of trained attack dogs, Dobermann pinschers, to police and monitor inmates, and certain other attempts to engage in prisoner conduct control through means which, to my way of thinking, are not acceptable or do not reflect well on this ministry.

The other matter which was brought to my attention by certain officials was the entire episode of Mr. Ian Leithead, who was at one time in the Maplehurst institution, had resettled out west, and was then, within six months, brought back to work at the Toronto Jail at great expense to the ministry. We are wondering whether this kind of waste in obtaining staff is really in keeping with the constraints attitude of the ministry.

To conclude, I would like to say unhesitatingly from having talked to my party colleague at the federal level, the Solicitor General, I believe we are running a very good provincial system. It is perhaps one of the best provincial systems in this dominion.

Hon. Mr. Leluk: In North America.

Mr. Spensieri: I think this is a credit to the staff and to the minister and I would hope that we will see a continuum, especially if it is kept

under the leadership of one minister for a sustained period.

As in every other system there are difficulties. I would hope that we have touched upon some of them. I will reserve further remarks until each item comes up for vote.

Mr. Renwick: I was thinking that Mr. Spensieri referred to his colleague, the member for Victoria-Haliburton (Mr. Eakins), but if it is agreeable to the committee and to Mr. Eakins, perhaps he would like to make his comments about that as a continuation of the opening statement of the critic for the official opposition.

I am in your hands, Mr. Chairman. If that is a more complete way to deal with the matter, fine. Otherwise I shall proceed.

Mr. Chairman: Fine.

Mr. Eakins: Proceed, Jim.

Mr. Renwick: The member for Victoria-Haliburton has indicated that he would be quite happy to pick it up at an appropriate time during the discussion on one of the votes.

Mr. Chairman, just as an aside, with respect to the earlier question of the settlement of the agenda of the committee, I would like to express my appreciation to you for the amount of time you must have had to devote to trying to sort out what at least appear on the surface to be very simple requests to order the agenda of this committee. I am glad that you were able to accomplish it as readily as you were. I am sure it took up an inordinate amount of your time in telephone calls and other discussions about it.

Perhaps some members in the room will be surprised to hear me say this, but I am very diffident in entering upon the estimates of your ministry, Mr. Leluk. I do not have any particular background on, or knowledge of, the area, other than a general layman-cum-lawyer's attitude toward the correctional system, and I have never—during the time I have been in the Legislative Assembly—been the critic for my caucus with respect to this ministry.

11:40 a.m.

My diffidence is compounded by ignorance in the first place, but secondly by my effort to try to understand the complexities of the problems your ministry faces. I have every reason to be even more diffident about my capacity to deal with them.

I would like to say right at the outset how much I know that you, Mr. Leluk, the ministry, the government and this committee—and I recognize that these comments may have been

made on another occasion when your estimates were here before this and when I was not present—are indebted to the long service in the ministry of Mr. Glenn R. Thompson. You, sir, honoured him earlier, on the occasion of his leaving the ministry as the result of the shuffle in the deputy ministers' roles last August. I had occasion to read then, at the time of the release by the Premier (Mr. Davis), some of the information about Mr. Thompson.

I looked with interest at the account in your magazine of the farewell dinner. So, I became aware of the immense length of the service of Mr. Thompson in the ministry, and that indebtedness to him is doubly compounded when I think of the number of ministers he has served under during his tenure as deputy. I believe there were at least seven, and probably eight, ministers under whom he had served, even in the relatively short time when he had been actually deputy of the ministry.

I am sure that you, sir, are not only appreciative to inherit the ministry after the dedication of Mr. Thompson, but also at this particular stage when, as it appears to me, you are going to reap the whirlwind you have at your side, Mr. Archie Campbell, as the deputy of the ministry.

I have had the pleasure to know personally and to admire professionally the work that Mr. Campbell has done in other aspects of his career, and particularly, of course, when he was with the Ministry of the Attorney General. I believe, sir, that the responsibility which you have to discharge, with his guidance, assistance and support, is a very heavy one at this time.

I am, of course, anxious to try to understand some of the problems and I would not hesitate for a moment to say that I do not intend to try to cover a large field. I listened to the descriptive account by the minister. I think it is valuable in describing the activities of the ministry, some of its history and projects for the future, and the multiplicity of these programs for alternatives to imprisonment which he has put before us and which obviously occupy a significant amount of the time of the ministry.

I have also listened to my colleague from the official opposition, Mr. Spensieri, on his continuing work in this field. I hope that occasion will permit me to remain as the critic in this ministry for perhaps two or three more sessions so that I will have an opportunity to be able to contribute in some greater depth and understanding.

Having now shed my cloak of modesty and diffidence, I would now like to, if I may, talk

about some of the matters which strike me as of very significant concern.

Before I go into some more or less specific or contained areas—I was going to leave my main thrust until later on in my comments; I must make that main thrust right now. I was struck very much by the conception which people appear to have, which was reiterated by my colleague Mr. Spensieri, about this trend away from incarceration. I have very serious reservations and very serious problems, and what little knowledge I have been able to glean of the field would indicate that is strict mythology.

I do not know what it is about reform movements. I think particularly in the area of corrections—I think one could almost generalize about it—that a reform movement develops in a community because people are upset about the inhumanity of some particular aspect of human affairs and want to better it. It develops a certain momentum of its own and when that momentum is developed, the bureaucracy it is attempting to change takes over the movement. It adopts it and before long, absorbs it. Everything goes on with all of the various interest groups concerned in a much more enlarged field and the original objectives are not attained.

The purpose is lost sight of. The institution survives or the bureaucracy survives for a period of time as having been a reform bureaucracy. But the analysis would indicate the reforms as originally conceived by the people who raised the questions fall very far short. They are indeed failures, except to the extent the bureaucracy—if I may use that, not in a derogatory sense at all—turns the failures into successes and pretends in some way that the reform has come about.

I used the phrase that the minister would reap the whirlwind advisedly, because I was surprised to read in a book published last year by the Centre of Criminology, Decarceration and the Economy of Penal Reform, by Janet B. L. Chan and Richard V. Ericson, the following statements. They are not limited to Ontario, but they were using Ontario simply because the figures for their particular purpose were available.

I am not adopting either the whole of their thesis or necessarily the argument they make. I found the article quite stimulating, but the particular statistical information they referred to and which is not gainsaid because it is backed up in the actual reports of the ministry, is as follows:

"In Ontario the rate of adult persons under

probation supervision has risen from 275.4 to 503.7 per 100,000 population from 1972 to 1978."

I was looking at the figures set out in table 1 in the annual report of the ministry for 1981, in order to bring this up to date. The increase in that rate from 1978 to 1981 was from 503.7 to 721.3 per 100,000 population. That is a substantial increase from the period I have referred to from 1972-78. I do not know what the projected figure is for this year, but it is obviously almost an exponential figure that is taking place with respect to those who are under probation. The article then goes on to say, "and during the same period the rate of incarceration has risen from 52.2 to 71.1 per 100,000 population."

11:50 a.m.

I do not have the actual rate-per-100,000 figure to bring it up to date to 1982-83, but it is sufficient to say that on page 1 of the estimates briefing material for this year, you indicated the projected increases of those incarcerated in institutions and in jails are in the range of, in 1978-79, and I am rounding out the numbers, 5,200; 1979-80, about the same, a slight drop; 1980-81, 5,300; 1981-82, 5,700; 1982-83 projected, 5,900, practically 6,000.

The article then goes on to say, "For those incarcerated, however, there is a growing use of temporary absences both for short (one to five days) and long (over five days) terms." It then points out that it seems to confirm the suggestion that innovations that appeared to be substitutes for incarceration became supplements to incarceration. In other words, decarceration is not cheaper since alternatives to prisons are not real alternatives, but add-ons to the system.

There are then in the article significant statements with respect to the escalation at the federal, provincial and municipal level of the total expenses of justice and the breakdown for the three levels of government of the division between police, correction and courts. This information is available if anyone wishes to consult the article to which I have referred.

I have tried to check, in other statistical information available to us, the thesis which I put forward based on those figures: that incarceration of persons in our system is increasing, the number of persons on probation and parole is increasing, the number of people who are on alternative forms of sentencing is increasing, and that the increases are substantially in excess of the rate of increase of the population of Ontario.

I have been unable to elaborate on the

introductory comments I have made on those kinds of comparisons, but at some point I would like the ministry to substantiate my comments with the precise figures. There is the whole question of overcrowding of the institutions and the need for further capacity in the institutions. That is emphasized and re-emphasized in the minister's annual report and in his statement to us. That is not at all, in my judgement, consistent with a policy which was originally designed as a reform movement to move people out of institutions into the communities one way or another.

Whether for strict economic reasons or for rehabilitative purposes, whatever the momentum was, it has long since passed. I do not know the answer to the question of building more institutions to hold more and more prisoners, to develop more and more probation and parole facilities, to have more and more people out in the community subject to some hold on them by the correctional ministry, and to develop more and more alternative forms of settings for people. I feel quite inadequate in trying to describe it, but I believe I have been able to convey some sense of the concern I have.

I had thought and hoped—in the course of trying to solve that initial impression and what I believe to be the major thrust of the comment that I made—that I could have had the benefit of comparative statistics which would have carried through and allowed me to present to you, or simply refer to, a book which would contain them.

I may say that a goodly portion of the information I have is through the good services of the legislative library, which went to some trouble to get me some of the information. One of the documents with which they provided me was the Correctional Services in Canada Justice Information Report for 1978-79 and 1979-80. Of course, that was chaired by Mr. Donald Sinclair, who was the Deputy Provincial Secretary for Justice for Ontario. It is a compilation of correctional information for each of the provinces of Canada.

In Ontario, there is a very significant summary on the ministry and a great number of statistics, but I could not find any consistent follow-through into the report of the minister for 1981 or into the 1982-83 estimates committee, or any coherent way for me to compare the statistical information which was available on the various bases on which it is set out in this report.

In this 1978-79 and 1979-80 justice informa-

tion report, obviously done in an attempt to produce across-the-country comparative statistical information, I would have liked to have seen the presentation of material by the ministry that would be readily understandable and readily comparable with that in the report.

I have two major pleas with respect to the major thrust of the comment that I have made. One, I would like to have—as soon as it is possible, but in any event before the concurrence vote in the assembly which will probably be some time next fall—the kind of information which is set out by this justice information report statistically carried through for the years 1980-81 and 1981-82.

I do not think it would be difficult. I am sure that all of the information is available, one way or another. Perhaps I have overlooked something and there is some more readily available method of doing it, but I need to have that kind of information or I will not have a sound statistical basis on which to continue my interest in this subject.

I suppose what I am saying is that whatever the fiscal restraints, whatever the philosophy to which my friend, Mr. Spensieri, referred, a philosophy of corrections, whatever the combination of factors may be, the result is that the number of people, sir, that you are being the recipient of in your ministry, is just going to increase by leaps and bounds.

I do not know any other way of saying it except that you are not going to be able to create the facilities to eliminate the overcrowding or to provide the accommodation which is involved. As you have had to admit, you are engaged in any number of make-do arrangements in order to provide that accommodation.

There is a continuing proliferation of the privatization part with respect to the resource centres—and more and more people are entering those systems—but not at a decrease to the number of inmates in your institutions for imprisonment, incarceration or pre-trial detention of one kind or another. The burden on your parole and probation system is going to become intolerable and I do not know what the answer to that question is.

12 noon

I think there must be a point in the demands of the system at which the back pressure your system is creating—back through the judicial system, back through the administration of justice—is going to have to be looked at very carefully to say what in God's name is happening in the system.

We all recall that the Law Reform Commission of Canada came out for restraint against imprisonment, that everybody was to seek different ways and not to imprison people. Here we are, four or five years later, imprisoning more and more people, having more and more people on probation and parole, and having more and more people engaged in discretionary forms of punishment in community resource centres of one kind or another, until I wonder where we are going to end up.

I specifically discount, as best I can, that this growth far exceeds any growth in the population of the province over the same period of time. I saw some reference that somehow, in 1990 or 1995, this is all going to level out again. I just do not believe that kind of thing. I will leave that for the corrections critic of the Progressive Conservative Party to deal with the correctional services minister of the New Democratic Party government of Ontario in that year and you, sir, may be here to fulfil that role.

Let me get away from that main thrust and come to the question of who is bearing the brunt of it. I acknowledge my concern about, and my interest in, the trade union which is involved in the negotiations which are being undertaken. I will come to the wage question later on.

The correctional officers of your system account for some 79 or 80 per cent of the dollar part of your ministry—a substantial part of the man years that are involved in your ministry is centred right upon the institutions you administer. I do not believe that one can read your descriptive statement today, the cumulative effect of the annual report of 1981 and the whole question of overcrowding, understaffing and the continuing dispute which is reflected, of course, in wages but goes much deeper than that—I do not know how you can expect that staff, whether they were unionized or not, to cope with that kind of problem.

Naturally, in our society, I guess we relate it to dollars, and there is that other aspect of it. However, I do think that you have—and this is neither a warning or a threat, it is simply an observation—a very limited period of time to solve the question of the staff relationship of the correctional officers with the inmates in the institutions, the actual places where the men and women charged with the custodial responsibility are facing the questions which are involved in the serious concerns which you have expressed to this committee.

You have done it, of course, in a very impeccable way, but I think the message you are

conveying to us is that you do recognize the problem. You may not share all our views of the problem, but it is an immensely serious one.

It is surprising how one loses sight of events over a period of time. I could not believe it was so long ago. I happened to be at a Christmas party in 1979 with Sean O'Flynn. He was entering one of your institutions shortly after that, as a result of the principle protest he made trying to solve this question of the correctional officers. I looked up the statements made on November 26 and November 29 in the Legislature of Ontario, just before this strike took place and the resolution was finally sought for the problem.

There were two problems. One was whether there was to be the additional separate category. That was decided under an arbitration decision and a ninth category was created. But the then minister, the Honourable Mr. Walker—and I refer to page 4945 of Hansard on November 29, 1979—responding to questions by Mr. Nixon, Mr. Mackenzie and Mr. Bradley, said this:

"The real issue here is one of wages." I want to move to the wages question without underestimating the other comments I made about the pressures put upon correctional officers in the correctional system. "It is fair to say that there is a legitimate complaint on the part of correctional officers in that there is a large disparity between what is being received by them now—about \$16,000 per year—and what, say, a first-class OPP constable might be receiving, \$21,000 a year. We hope that gap is going to be narrowed. Not only do we hope it is going to be but the Chairman of Management Board has given an undertaking that he is prepared to extend a special consideration in that case with respect to salaries. Negotiations have not even begun yet. They are to start next week and here we are talking about an illegal strike."

I can be corrected if I am in error about this matter. As I understand it, there is no contract in 1982. Am I correct in that statement?

Hon. Mr. Leluk: Yes, that is correct.

Mr. Renwick: After that 1979 commitment in the Legislature by your predecessor, the Honourable Gordon Walker, and by his reference to the undertaking by the Chairman of Management Board to narrow the gap between the correctional officers and the Ontario Provincial Police, the \$5,000 gap which was to be reduced has now widened to over \$9,000.

The figures I have would indicate that at present a correctional officer is receiving some-

thing in the neighbourhood of \$21,000 and a first-class OPP constable is receiving something in the neighbourhood of \$9,000 more than that; close to \$30,000. Give or take a few dollars, that is what I am saying.

I ask the minister, in all fairness and leaving aside any particular partisanship of mine with respect to the issue of trade unionship or not, how can he allow that condition to continue to exist? I understand the matter is now out to mediation of some kind or other, but in the face of what took place in 1979, I can only express my amazement at the particular result which has occurred.

12:10 p.m.

I have considerable sympathy for the premium which is being talked about; that you accept a basic-rated capacity for the particular institutions in which the correctional officers are serving. If the overcrowding increases above that, there is an increase in pay to take into account the additional burden on the correctional officers up to, say, 25 per cent as a top maximum. I would certainly support that particular view.

I want to come back to one other aspect of this same question. I was trying to get a bit of information and I received some, but I do not pretend to understand it, about the Workmen's Compensation Board staff claims on inmate attacks or inmate contact of one kind or another, related solely to the correctional officers. They presumably are the only ones subject to that kind of injury during the course of their employment.

I could not find any accurate information about it. I do understand, from the information I have, the actual work days lost have gone way up: the days lost from work by correctional officers, either related to injuries which they receive in contact with the inmates or because of the stresses and strains upon those officers in the particular milieu in which they work.

This leads me to the next question. When the time comes, I want the ministry to know that I want to try to understand what would happen—assuming as I do that I might at one time have been accepted—if a person like myself or the chairman applied to become a correctional officer. What would happen to him from day one until day 365 with respect to how he is taken into the system, what training he receives, where he receives that training, what basic standard is the aim of the system and what is the adequacy of it?

I have no way of comparing it one way or

another, but I am told if one were to take the federal intake training system for staff people in the correctional role or that of any of a number of other provinces, the rating of Ontario would be quite low with respect to staff training made available to people who enter what all of us would consider to be a relatively hazardous role in our society.

Another statistic that would be of assistance to me in relation to the main thrust of my comments, is what is the staff/inmate ratio? How has it developed over a period of time in relation to correctional officers and in relation to the system?

I do not intend to go on at great length. I would just like to run through five or six topics I will need some assistance with, when we deal with them in the actual votes in the ministry.

I would like to have some assessment by the ministry—if my understanding is correct—of the effect of the passage of the Young Offenders Act with respect to the population of your institutions. I understand there is now general agreement on age 17. There is no agreement as yet?

Hon. Mr. Leluk: You mean, as far as Ontario is concerned?

Mr. Renwick: I understand the Young Offenders Act is likely to be passed. I would like to know what you foresee as the impact if a particular age, or an alternative age, is accepted. That seems likely to be another significant add-on to this whirlwind which I think you are about to face.

I was quite interested in this fine-option question, simply because—again, without any particular knowledge of it—I and other members of the committee had correspondence with a gentleman, Mr. Henry Grammond, the president of the Community Service Order Coordinators Association of Ontario in Hamilton, when he wrote to me about a year ago about the proposal for a fine-option system.

Thanks to the legislative library, I found in "A World without Prisons" a complete reproduction in one of the appendices of the Saskatchewan system, along with their forms and all of the other information about it. I will be interested in the further comments about the questions which have been raised, to which the minister referred in his statement.

I cannot believe there could be any great delay in instituting such a system when there are models available which appear to be quite clear, not only with respect to how it works, but the method by which it works and all the forms

available in connection with it. I would like to have some further information about that.

I am concerned about this whole question of the person charged with the crime, the witness and the victim, and the question of how we treat people who are witnesses in the court, let alone those who are also victims as well as witnesses, when they need the kind of support which is required.

I am extremely interested in the whole question of the work being done by the research group in the ministry. From what little I can read, the evaluation research design models for studies to follow up on what happens to people as a result of all these programs is in a state of considerable intellectual turmoil, if I could say that, as to whether or not there are adequate models and whether or not one can follow through with these programs to see if they are achieving the kind of result they are intended to achieve.

I am not one who takes the extreme view that nothing works. If for no other reason than the kind of society we believe we live in, we have to assume there are ways by which people who are products of society and who are thrown into the penal system can be returned to the society in a useful and productive way. I do not think there are any simple answers to that, but I think it has to be pursued. There are skills and abilities available to evaluate all of these programs in a way which will make very good sense.

I will be interested in some further elucidation on the capital projects part of the work of the ministry because I understand that basically comes under the Ministry of Government Services. However, I would like to know what your relationship is with that ministry.

I was surprised when I looked at the regulations under the single statute you administer. Either the regulatory power is not sufficient or the regulations are very scarce when you consider the number of people who are subject to the kinds of discipline you exercise throughout your ministry.

I am not certain of the extent and degree to which a society is entitled to encroach upon a captive audience, such as the audience you have with respect to behavioural modifications and that type of question, which you touched upon in the discussion you specifically referred to when the question of the research vote is before the committee.

12:20 p.m.

I have obviously gone on too long and I want to say that I did note a very significant lack of

information with respect to native peoples in the presentation you made today and also in the annual report. I know that when you, Mr. Campbell, Mr. Spensieri and I met for lunch, one of the matters we discussed was whether or not later on in the year there might be an opportunity to visit that northwestern part of Ontario, or elsewhere in the province, to get some sense of the kinds of problems the justice system creates for native peoples and what your ministry, participating in the solutions to those problems, has to offer.

Mr. Chairman, I think I will rest my position with those comments and try to deal with things as they come through the estimates.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Minister, do you wish to respond to these?

Hon. Mr. Leluk: Yes, Mr. Chairman, I would like to do it. I am just looking at the clock. What is our time today?

Mr. Chairman: We go until one o'clock.

Hon. Mr. Leluk: In response to Mr. Spensieri's comments—and I will try to respond to as many comments as I can—he mentioned he was in favour of encouraging expansion of the community programs within the ministry. He also mentioned that the thrust in this direction by the ministry was possibly as a result of the constraints. I just want to point out to Mr. Spensieri that the developing trend in community programs within this ministry has been something that has been continuing since the middle 1970s.

There are primarily two policy reasons for these programs. They work extremely well for the client and the community as well. The work ethic is something we have pushed in this ministry. As an underlying philosophy, we believe that inmates should be put to productive work and the people who do go out into the communities and to our community resource centres are carefully assessed; they are clients who are considered to be a low risk to public safety, and while they are out in the community, they do productive and meaningful work.

There is a cost saving to the taxpayers of this province in that the costs of keeping these people out in the community runs at an average of about \$25 per inmate, as opposed to \$63 per day in our correctional institutions. There is also cost avoidance. Last year there was some \$4 million in cost avoidance in not having to build an institution to house these people. The work that is done is measurable and is something that is also meaningful.

While these people are out in the community,

they are allowed to continue employment and they do earn salaries. I believe last year's figures show that they did earn about \$2.4 million, of which \$600,000 was provided for room and board and \$450,000 to their dependants, which kept these people off the welfare rolls of the province. Also, about \$250,000 was paid as debt and restitution to the victims.

The other policy reason is that the community programs do provide an alternative to incarceration, as has been mentioned. The success rates of the community programs is something I might comment on. It is not just the economic alternative. Of the 9,000 probationers out of the community service order program, 88 per cent of them remain crime-free for one year following the completion of the program; 78 per cent of the 3,000 community resource centre residents remain crime-free after one year; and about 80 per cent of our 6,800 probationers, as I mentioned in my earlier remarks, remain crime-free during terms of up to two years in the community. So there are other advantages as well.

Mr. Spensieri mentioned that our need is not so much for minimum security but for medium-security facilities. He mentioned we are not looking at other possible usable facilities such as schools. I might say my staff have addressed this very issue, as I mentioned in my remarks, and we have just not found appropriate facilities for the purpose.

The real difficulties with school facilities is the conversion of a school to a medium or even a maximum security facility. It should be pointed out here that although accounts are going up somewhat, we have a need for the maximum security facilities because of the number of remand cases in our institutions. These border on 40 to 45 per cent in many of our institutions. Many of these people have been charged with serious crimes and require maximum security facilities. There is the increasing need for that type of facility.

With respect to capital construction, my staff have been addressing both the short-term and the long-term need for suitable accommodation for people sentenced to our care. Our long-range, major capital accommodation plan is nearing its final stage of completion. I might say this is a high priority with the ministry. We have been addressing the short-term needs for additional space, particularly in the Hamilton-Toronto corridor where we have a fairly sizeable problem with overcrowding. We have taken some very positive initiatives, such as the upgrad-

ing of security at the Mimico Correctional Centre in Etobicoke. We have erected a new fence and with the available space we will be able to provide accommodation for up to 150 selected inmates.

Also, as I mentioned in my earlier remarks, we have opened the fifth floor at the Hamilton Detention Centre, which will provide an additional 60 beds there. We have also made use of 40 additional beds during our high counts in the dormitory at the Guelph Correctional Centre.

12:30 p.m.

I want to point out we are addressing this problem. The possibility always remains we will need a new maximum security facility somewhere in what we call the banana belt in the Hamilton-Toronto area to house some of the long-term inmates put into our care. We find that the judiciary are sentencing inmates to longer stays in our institutions, up to two years less a day. This is also creating part of the overcrowding within the institutions.

Mr. Spensieri mentioned we should be looking at some type of portable facility. I want to point out we have had one in place at the Barrie Jail for some time now, but we have been working on a new prototype we think has great potential.

Mr. Renwick: When you spoke about that in your statement, I was thinking that should help depopulate the jails since the chaps in them make them. I would think there will be some kind of an escape hatch.

Hon. Mr. Leluk: This prototype will serve a very useful purpose, particularly with the smaller jails scattered about the province. Mr. Renwick remarks our inmates are making them. They do an excellent job, I might say.

Mr. Renwick: Sure they do.

Mr. Swart: They have a vested interest.

Hon. Mr. Leluk: I want to reassure the member for Riverdale that they are foolproof. We do not expect any escape hatches to be built into the system.

The 112th American Association's correctional congress is being held here in Toronto this coming August. We will be encouraging those delegates to visit various institutions in the local area primarily, because of geography and distance. I know there will be visits made to a Toronto institution as well as some others like the Ontario Correctional Institute, the Maplehurst Complex and the Vanier Institute for Women, particularly to show the delegates the various programs we have in effect and to give them a

fairly good cross-section of what the ministry is involved in with respect to various programs.

Mr. Spensieri talked about user-pay mentality and payment for food and lodgings. He remarked about the recent court decision where Judge Belobradic ruled intermittent fees should not be collected from inmates who were serving intermittent sentences. We have asked the Ministry of the Attorney General to appeal that decision.

However, we should point out some of the positive aspects of that particular program. Again, this is in keeping with the work ethic of the ministry. Inmates are allowed to go out into the community and continue their jobs. The feeling is inmates should not be getting a free ride at the expense of society and should be offsetting some of the cost to the taxpayers of this province. The weekly fee of \$10 for lodging and for food certainly was not considered to be excessive. I think there is a great deal of public support for this type of program.

However, after the decision was rendered, the director of our institutions division, John Duggan, did issue a directive to the superintendent at Mimico Correctional Centre to immediately cease collecting such fees. Mr. Spensieri, you had a specific concern in that area because I believe your assistant telephoned that institution not too long ago and indicated that he had heard, despite the court ruling, that this ministry was continuing to collect those fees.

Mr. Spensieri: Just checking.

Hon. Mr. Leluk: I am glad to see that you are on the job. However, as I say, we believe there are some positive aspects to the program, such as deferring the considerable cost to the taxpayer of accommodating offenders in the institutions and assisting the offender to accept responsibilities for his acts, as well as ensuring equality of treatment for all working inmates.

I think the point was raised that there are those who are possibly not able to make payment and should not have to. I just want to point out that there are exemptions. Inmates are exempt from the requirement to pay a fee if they are students in school, a college or university, or enrolled in a course of vocational or technical training; if they are not gainfully employed and are making reasonable efforts to secure gainful employment; or if they suffer from a physical or psychological handicap or disorder that impedes their ability to secure gainful employment.

Also, there is an exemption by order of the minister for such reason as the minister considers appropriate. We are not forcing inmates who are not able to make those payments to

make payments, Mr. Spensieri. I just want to make that very clear.

It was also your feeling that the present restitution program did not go far enough. I believe you said you would like to see more contact between the victim and the offender. I want to point out to you that we do have a victim-offender reconciliation program in place. This is a program whereby we do have in many cases victims and offenders who come together in face-to-face contact and try to decide on some recompense, some agreement—

Mr. Spensieri: But always in aid of restitution; that was my point. It should not be confined to simply a restitution process.

Hon. Mr. Leluk: We do have also in place a victim-witness assistance program currently functioning in Rexdale on the outskirts of Toronto. The ministry and the Etobicoke temple of the Salvation Army have been operating a pilot program which has served victims of crime, including witnesses, in co-operation with No. 23 Division of the Metropolitan Toronto police force.

I do not know whether you are aware of this program, but the victims of crime, witnesses, and victims as witnesses have long been considered forgotten parties in the criminal justice system. The needs of the victims of crime, whether violent or property crimes, can range from requirement for information to counselling and support to help them deal with the trauma related to the offence.

The program in Rexdale is operated by one full-time co-ordinator, who is an employee of the temple. It has been supported by some 34 trained volunteers who are available on a 24-hour, seven-day-a-week basis. During the year these volunteers have responded—and I believe I mentioned this in my earlier remarks—to about 200 police requests and have assisted over 400 people who were victims of crime.

12:40 p.m.

It has had very positive benefits. It has not only freed up police to attend to their regular duties, but has also given the justice system, the Ministry of Correctional Services, the police and the courts an opportunity to provide a co-ordinated and effective human service to individuals who require support and care.

It might be pointed out here, however, that the responsibility in this area might seem to be more in the Attorney General's department. We have Don Sinclair as Deputy Provincial Secretary of the Provincial Secretariat for Justice,

who is the chairman of the national task force on victims' services, and Arthur Daniels, the director of our community programs division, who is helping him out in that area.

I think it was also pointed out that there was more and more delegation to private agencies in the community and that there seems to be a lack of control by the ministry over these agencies. I want to point out that these agencies, some 150 of which at present we contract with, do an excellent job for this ministry. The controls are there through audits and inspections, and standards are laid down. If we find, for example, that an agency is not doing the kind of job we would expect of it, Mr. Spensieri, we simply cancel its contract. This has been done in the past, where we have not felt that an adequate job was being done. There are what we would consider to be adequate controls over these agencies.

While I am on this topic, we also believe we should be involving the community in the justice system. After all, many of these inmates will be reintegrating into the community, and I think we would like to feel we can provide the kind of an atmosphere for them which will help in that regard and which will also benefit them in the rehabilitative process towards this end.

I believe you also mentioned that there has been a reduction of services in the institutions as a result of the constraints that we face at present. Although we have had to cut back somewhat during the constraint period, we still feel the services we are providing in the institutions remain very strong.

You mentioned the fostering of a military structure within the institutions. I do not agree with that particular observation. We do not, for example, have guns in the system. Our staff have been very vocal, so there is no muzzling as you have stated. Certainly they have been outspoken, particularly recently in the media, whether it be television or radio. We do not run what you term a military type of structure.

In dealing with remissions, you seem to be under the impression the old system of statutory remission is still in force. The automatic awarding of forgiveness of one third of the sentence has been removed from the governing or federal legislation since July 1978. Instead, our ministry grants only earned remission. This is designed to require an inmate to earn a reduction of his sentence by good behaviour. This would include applying himself to work assignments, to educational and vocational studies and to general reasonable behaviour towards other inmates and staff. In this way, he demonstrates his

fitness to return to the community. An inmate can earn up to 10 calendar days a month off his sentence. This ministry has felt that remission should not be granted automatically. In fact, we asked Ottawa to make the change to the present system of earned remission.

You said this ministry has not addressed the problems of overcrowding. I stated this earlier and I will repeat it because I believe it should be emphasized. The staff have been concerned with high counts, particularly in the Hamilton-Toronto corridor. We have been addressing this very problem. We have come up with some short-term solutions to relieve some of the pressures, particularly on the three Toronto institutions and the Hamilton-Wentworth Detention Centre.

We have been looking at the long term. As I said earlier, a report on the major capital accommodation plan is in its final stages and we are looking at the possibility of building on to existing facilities or building new facilities. We are looking at all these alternatives. So we have been addressing that problem.

I believe you spoke of the lack of accountability within this ministry, specifically talking about the Toronto Jail and the unfortunate Christmas escape that took place there. There was a thorough investigation conducted by this ministry's inspections and investigations branch. Our inspectors worked very closely with the Metropolitan Toronto police in gathering information. Based on the preliminary findings of that investigation, the inspectors made recommendations which were acted upon immediately to prevent similar breaches of security.

12:50 p.m.

To provide specific details of the actions taken as a result of the investigation would not be in the public interest. In effect, we would be giving out a blueprint to would-be escapers or their accomplices, thereby jeopardizing the safety of staff, other inmates and the public. However, our findings did show both physical and operational elements contributed to the escape in question.

The investigation disclosed there was a general reduction in the level and the quality of the application of security procedures in the months preceding this escape. All correctional staff at the jail have been alerted by way of a letter from the institutions division executive director, John Duggan, on the critical importance of strict adherence to the basic correctional practices in respect to shift changes, log entries, corridor checks and searches.

We did make some changes with respect to management there. This is in keeping with the ministry's policy of moving its senior managers more frequently around to various institutions. The deputy superintendent at this institution was replaced by the deputy from the Hamilton-Wentworth Detention Centre, who has assumed the position of acting deputy superintendent in Toronto. This man will be of considerable assistance to the present superintendent there in reviewing and revising the operating practices and the procedures at this jail.

In addition, the senior assistant superintendent at the jail has been reassigned to another institution. His position has been filled by Mr. Leithead, who has come back to our ministry after having served a short term out in Alberta. He was an excellent employee while with us, and we are glad to have this man back. I know he is going to make a definite contribution at this particular institution and to the ministry as a whole.

It is always regrettable when an escape occurs from an institution. It goes without saying that it is embarrassing to staff and to the institution, as well as to the ministry, but I am confident the measures taken after the escape will ensure high standards of security are maintained at the Toronto Jail in the future.

This might be the proper place to get on record the letter sent from John Duggan, executive director of our institution division, to the staff at the Toronto Jail. It was sent to all staff on March 2 of this year. There were some 237 letters addressed individually. It reads as follows:

"The Toronto Jail occupies a prominent position in the Ontario correctional system and is part of a ministry which, in my view, occupies a foremost position in corrections on this continent. The Toronto Jail has earned a reputation as a correctional institution in which staff at all levels perform their duties with a uniformly high degree of professionalism.

"This reputation has been achieved because, with few exceptions over the years, staff have adhered consistently to correctional practices and procedures which were developed to ensure humane supervision of inmates and the highest standard of institutional security.

"The escape of four inmates on December 25, 1981, has made it necessary for us to examine our procedures and to take measures to ensure there are high standards consistently applied at all times. As you know, a thorough investigation into the escape was undertaken by the ministry's

inspections and investigations branch. I do not intend to go into the details of the findings of the investigation.

"It is sufficient to say that responsibility for the escape could not be apportioned directly to any individual or group of individuals. The investigation indicates quite clearly that there had been a general reduction in the level and the quality of the application of security procedures at the jail in the months preceding the escape.

"It is evident from the investigation that staff at all levels need to renew their dedication to the standards of performance which are absolutely essential within a maximum security institution to ensure safety of staff, inmates and the general public.

"The supervision on a daily basis of a difficult and often dangerous inmate population is a demanding and challenging job. Staff who work in correctional institutions are charged with the responsibility of remaining vigilant while performing what are sometimes repetitive and routine tasks. We cannot allow boredom or complacency to undermine our commitment to professionalism. It is essential that staff maintain strict adherence to basic correctional practices at all times.

"Immediate action was taken after the escape to improve physical security and to restore adherence to sound, basic correctional procedures and practices at the jail. Over the next few months further changes will be instituted in the operating practices and procedures and in the organizational structures of the jail.

"The escape is behind us; our task now is to renew and revitalize our commitment and enthusiasm in order to meet the challenges of the future. I ask you in the months ahead to work together to restore that sense of pride and dedication to professionalism which has been a tradition at the Toronto Jail.

"Signed, John Duggan, executive director, institutions division."

I believe, Mr. Spensieri, you brought up the question of salary increases and better working conditions. I would just like to point out to you that this matter is at the delicate stage of negotiations with the Civil Service Commission and the representative union. I do not feel it would be proper at this time for me to make any comments.

You also mentioned the use of a dog. I believe you referred to it as a Dobermann pinscher attack dog. I want to point out to you that the

dog is a Dobermann pinscher, but he is not an attack dog. We have brought this animal in—

Interjection.

Mr. Eakins: He is right in saying that this ministry is going to the dogs.

Hon. Mr. Leluk: No, hardly, Mr. Eakins.

It is an experimental program. The animal is being used at Elgin-Middlesex. The staff there felt that the institution was at risk from outsiders trying to introduce contraband into the centre from outside by climbing the perimeter fence.

Mr. Spensieri: It is to keep people out, is it?

Hon. Mr. Leluk: That is right. There are those who are just trying to get in.

It should be pointed out that we have a number of institutions with peripheral fences where the public have direct access, and we have had problems in the past with contraband being handed to inmates through the fence or thrown over into the yard. This has been of concern to the staff in the ministry. The use of the dog acts as a strong deterrent to persons trying to introduce contraband and is less costly, say, than expensive additional fencing or walls. I think you would agree with that.

Mr. Spensieri: They do not join trade unions.

Hon. Mr. Leluk: Again, this is a pilot project employing only one dog. We do not have others in the system at the present time. The dog, I might add, has no contact with inmates and it is only used with a handler who patrols the perimeter of the institution. It is not used within the institution itself. It is for patrolling the perimeter of the institution, which is an enclosed area between the outside wall and the perimeter of the fence. It is used primarily as a security aid for the protection of staff and, as I say, the security of the institution.

The dog would not be in a position to attack anyone unless that person climbed into the security walkway for nefarious reasons—I want to emphasize that—to escape or to assist an escapee.

Mr. Chairman: Mr. Minister, might I break with the dogs?

Hon. Mr. Leluk: All right.

Mr. Chairman: I do not think you have started to reply to Mr. Renwick.

Hon. Mr. Leluk: No.

Mr. Chairman: Perhaps this is a good point at which to break. We will adjourn to reconvene tomorrow following routine proceedings.

The committee adjourned at 1:01 p.m.

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No. J-2

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of Correctional Services



Second Session, Thirty-Second Parliament
Thursday, May 27, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, May 27, 1982

The committee met at 3:42 p.m. in room 151.

After other business:

3:56 p.m.

ESTIMATES, MINISTRY OF CORRECTIONAL SERVICES

(continued)

Mr. Chairman: Sorry, Mr. Minister, we had to get our procedures straightened around.

We are now back on the estimates of the Ministry of Correctional Services. I believe we ended last day with the minister in the middle of his reply. We have three hours and 25 minutes remaining in the estimates. Mr. Minister.

Hon. Mr. Leluk: Thank you very much, Mr. Chairman. I would like to continue with my remarks in reply to the comments made yesterday by the member for Yorkview (Mr. Spensieri) and possibly I could clarify one or two points where we need some clarification.

The member for Yorkview stated yesterday that because of the large numbers of short-stay inmates in our institutions, we did not require the \$100,000 a cell construction. I would just like to clarify that this ignores the fact that many people who are remanded in our institutions are charged with some very serious offences, and although they may be subsequently bailed or released on their own recognizance after a short stay, the seriousness of the charges means that we have to provide maximum security facilities to house these people.

Also, yesterday I believe the member for Yorkview stated there was a reduction in institutional services. "There was a constant decline," if I can quote him, "because of the present government constraints." In replying to that, I believe I said that despite the constraints, these services which are being offered still remain very strong. I would like to point out that the only position deleted during the 1981-82 fiscal year because of constraints was a trade instructor at the Rideau correctional centre.

There are no cutbacks anticipated for the fiscal year 1982-83, and by means of the improved classification system, which was introduced in 1980 and alluded to in my remarks yesterday, the program effectiveness has in fact

increased due to a closer matching of available programs and inmates. There are 29 professional classification staff who are based in the institutions. Some of these, I might say, also contribute to the actual program delivery. The review of educational and related programs now being undertaken by the Minister's Advisory Council on the Treatment of the Offender will also contribute positively in this regard.

The member for Yorkview also remarked on the Martineau case, a decision of the Supreme Court of Canada, and commented upon its application to the Ministry of Correctional Services in this province. As he quite accurately stated, the judgement of the Supreme Court of Canada in Martineau number 2 imposes on prison authorities a general duty of fairness with respect to the management of inmates and particularly with respect to the imposition of institutional discipline.

This is a duty which we welcome and which we discharge to the best of our ability, I might say. An inmate who is dissatisfied with a disciplinary penalty imposed upon him, particularly the loss of earned remission, may have this matter reviewed by the ministry. We are in the process of reviewing our institutional discipline procedures in the light of the Charter of Rights, and our preliminary conclusion is that our inmate discipline procedures do comply with the provisions of the Charter of Rights.

When you consider the fact that we have between 6,000 and 7,000 inmates in custody on any given day, I think it is a remarkable tribute to our system that we have had very few legal challenges to the fairness or legality of our treatment of the people in our custody. Apart from the Casserly case, which turned on constitutional issues and questions of legal authority and which will be heard by the Court of Appeal next month, there have been no court challenges to our procedures during the last year. I think this in itself is a significant indication of the care that we take in ensuring fair treatment of the prisoners in our custody.

The member also mentioned the question of access to legal counsel. I might say that inmates in our system are given very generous access to counsel and institutional staff who go out of

their way to accommodate visits by lawyers. We have set up a special telephone system in a number of areas of the province, including Metropolitan Toronto, whereby prisoners can have telephone access to their legal counsel.

4 p.m.

The inmate-lawyer telephone system began on a pilot project basis at the Ottawa-Carleton Detention Centre and now operates very successfully in six other detention centres. It has proved satisfactory, both to inmates and lawyers, and it has increased the access of our inmates to legal advice. It has been of greatest assistance to legal counsel in the preparation of their cases and the representation of their clients. It provides direct and confidential access and has been very much welcomed by the legal profession and the inmates alike.

In my earlier remarks on the relationship between the admissions and the days' stay to be served in our provincial institutions, I neglected to call on Dr. Birkenmayer who might provide us with a monograph on this issue. Would you like to do that, Dr. Birkenmayer?

Dr. Birkenmayer: What we have here is an attempt to relate admissions to actual time served in our institutions. You will see we have sentence length broken down by the standard categories we have always used. There is always the concern about the admission of people serving under 30 days. I have aggregated that for you; so 53.8 per cent of our admissions are actually to serve under 30 days.

If you go over to the righthand column, you will see it is marked "time to be served." If somebody is serving a sentence of seven days, that gets added up to seven days. You will see the 53.8 per cent really relates to 8.1 per cent of the total time to be served in our institutions. That means the long-term inmate who comes in with a sentence of, say, two years less a day has a heavier load on our system in terms of days' stay than an inmate who comes in with a sentence of seven days. If you ran a hotel and you had 365 people come in and stay overnight, or had one person stay one year, you have the same bed used for a year. In one case it is used by one person, and in another case it is used by 365 people.

Hon. Mr. Leluk: The member for Yorkview (Mr. Spensieri) mentioned in his remarks yesterday that a more concerted effort was required to meet the needs of staff in our institutions. I am proud to say we have one of the best personnel branches in the government. Last

year we added another staff relations officer. We were also one of the first ministries to experiment with local employee relations councils and we now have them at local, regional and ministry-wide levels.

A further comment was made regarding the "muzzling of staff." I spoke very briefly to this yesterday and neglected to mention one very important point. I said our staff have been vocal and have spoken freely with the media, whether it be the press, radio or television. However, there is a limit on how much staff can say about certain matters relating to our institutions, particularly matters of institution security which could place the staff, the inmate and the public in jeopardy.

I would like to call on John Duggan, who is the executive director of our institutions division, to make a few comments on this issue.

Mr. Duggan: The only recent incident I am aware of that may come under the heading, as it was referred to yesterday, of "muzzling" or attempting to "muzzle" staff, was in the Toronto area. I sent a letter to some staff of that institution and I would, if I am allowed to, quote a couple of comments from that letter to reveal the intention of the letter.

It states: "It is recognized that as a union representative you do have a valid responsibility for expressing the general concerns of the staff you represent regarding working conditions and related matters. However, the specific nature of some of the statements attributed to you by the news media not only may jeopardize the successful completion of the investigation into the incident currently being undertaken by the inspections and investigation branch, but also may pose a serious threat to the ongoing security of the institution.

"You are reminded that when you commenced employment as a civil servant you swore an oath of office and secrecy in accordance with section 10 of the Public Service Act which states"—I will not read the whole of the act, but just the one section which is relevant—"I will not disclose or give to any person any information or document which comes to my knowledge or possession by reason of my being a civil servant, so help me, God."

Another quote from the final sentence of the letter was: "You are hereby cautioned, however, that the public release of privileged information pertaining to the internal security and operations of the Toronto Jail is in contravention

of your responsibilities as a civil servant and as a peace officer."

Mr. Renwick: Is that the public service oath?

Mr. Duggan: Yes. It is section 10 of the Public Service Act, oath of office and secrecy.

Mr. Spensieri: I take it this is a letter addressed to a particular union shop or—

Mr. Duggan: No. It was addressed to members of staff.

Mr. Spensieri: In general?

Mr. Duggan: No, not to staff in general. I did not want to read the names of the staff, but it was addressed to individual members of staff.

Hon. Mr. Leluk: Thank you, Mr. Duggan. Yesterday, both the member for Yorkview (Mr. Spensieri) and the member for Riverdale (Mr. Renwick) mentioned the forthcoming Young Offenders Act and I would like to make a few brief comments about that.

About 15 years ago the federal government started to talk about reforming the Juvenile Delinquents Act. Virtually all of our many discussions with the federal government since then have proceeded on the clear understanding that we would remain free to maintain our programs under which 16- and 17-year-olds are dealt with in the adult criminal courts and correctional system.

The federal government very suddenly, and very recently I might add, changed its policy and decided to impose a uniform age across the country. When the Young Offenders Act comes into force in approximately three years, 16- and 17-year-olds will, for the first time, be treated in the courts and the correctional institutions as if they were juveniles.

This lumping together of 16 and 17-year-olds with children in their very early teens will have a very significant consequence for Ontario. We have not yet been able to determine the possible impact of this change which was made in the face of our very serious concerns about treating 16- or 17-year-olds in the same system as younger children. It has not yet been possible to determine the precise impact. We are beginning to explore a wide range of possibilities in co-operation with the Ministry of Community and Social Services.

Approximately 700 of our inmates and approximately 4,000 of our probation case loads are 16- or 17-year-olds. The proposed Young Offenders Act will have a major impact on these people in our care and custody. We are in the process of setting up a small task force within the ministry to give us the preliminary analysis within the

next few weeks of the range of different implications that this major change could have for our ministry and the care of individuals aged 16 and 17 in our care and custody. We are, of course, consulting with the Ministry of Community and Social Services, as I mentioned before.

4:10 p.m.

I believe that concludes my comments with regard to Mr. Spensieri's remarks. I would now like to proceed to comments made by the member for Riverdale. He did pose a question about staffing ratios and expressed concern that our correctional officers' staffing levels may not be keeping pace with the increase in the inmate population.

In responding to this concern, I would first like to point out that the physical layout of each of our institutions, that is, the number of postings which must be manned, is a primary factor in determining staffing requirements. For example, whether a jail corridor houses 15 or 25 inmates, there still needs to be a correctional officer assigned to supervise the post associated with that unit. Obviously, increased inmate counts create other work-load pressures on an institution, such as more visits, admissions and discharge activities, expanded programs and so forth. However, the required staffing level increase is not directly proportional to the inmate population increase.

My ministry has continuously reviewed the staffing needs of all institutions to ensure the safety and the security of the public, the staff and the inmates. In fact, this ministry is one of the very few that has received a staffing increase during recent years of constraints and limits on the growth of the public service. In the past two years alone we have increased our staff by 90, and 60 of these have been institutional staff. In 1975 we employed 1,768 correctional staff members; today we have almost 2,800 such employees, an increase of over 1,000. In the same time period our complement of probation and parole officers has increased by 56 per cent, that is, 244 in 1976 and 381 at the present.

As I stated earlier, since it is primarily the number of posts which determines staffing levels, it is somewhat misleading to talk about staff to inmate ratios. However, I can tell you that our present staff-inmate ratio is better than that of all but two provinces, Nova Scotia and Quebec, including jurisdictions that have a preponderance of very small facilities which require more staff per capita.

I can also assure you that we employ as many staff per inmate now as we did in 1975—in fact,

more. Even in the Toronto Jail, which has been mentioned specifically as one institution which is facing population pressures, we presently employ more correctional staff per inmate than we did in the mid-1970s—3.1 inmates per staff member in 1976 and 2.7 inmates per staff member at present.

I believe both Mr. Renwick and Mr. Spensieri made reference yesterday to the issue of correctional officers' salary levels. I have already noted the fact that negotiations on this very important matter are currently at the delicate stage of mediation. I am further advised that a meeting between the parties and the mediator is scheduled for June 4. Although the Civil Service Commission, not this ministry, represents the government in the negotiations, we do have a representative on the government negotiating team.

My ministry has gone on record as supporting a fair level of compensation for the very demanding job which our correctional officers perform on a day-to-day basis, and I have personally expressed this view to my colleague the Chairman of the Management Board (Mr. McCague). It is difficult to make comparisons with different occupational groups such as police officers and others. However, the wages that are paid to our staff should be comparable with those of correctional workers in other Canadian jurisdictions, and I am certainly hopeful that if both parties are reasonable and fully co-operative, a settlement can be achieved in the very near future.

Mr. Renwick: Are you saying that you do not accept the position taken by your predecessor?

Hon. Mr. Leluk: Mr. Walker, about narrowing the gap?

Mr. Renwick: Yes. I am aware of problems of comparison. The general thrust of your predecessor's statement was that one of the ways of looking at correctional officers was in relation to first-class Ontario Provincial Police constables, the closing of the gap without being arbitrary to something close to parity on the matter. Are you disengaging from that position?

Hon. Mr. Leluk: What I am saying here, Mr. Renwick, is that I think we should be looking at the comparable salaries of correctional officers in our sister provinces. I think that is what I am saying.

Mr. Renwick: I am not satisfied but carry on. I did not mean to interrupt you.

Hon. Mr. Leluk: Fine. I will just carry on a little further.

As I have stated previously, it is very difficult

to make salary comparisons between different occupations even if they are in a related field. You mentioned first-class police constables. I think you were referring to the Shapiro commission and the judge's statement about narrowing the gap between first-class constables and correctional officers. When Judge Shapiro examined the issue of salary differential between correctional officers and OPP constables in 1977, the difference was 31.5 per cent in favour of the OPP. However, after the 1980 settlement for correctional officers, this differential was reduced by almost two percentage points to 29.6 per cent.

As the OPP's 1982 salaries have been settled, while those of the correctional group are still under negotiation, the differential is now considerably more, about 43.8 per cent. Judging from the average level of settlements in the Ontario public service this year, I am confident that the percentage differential between these two groups will certainly not increase beyond the 1980 level and will hopefully decrease further.

I might go on to staff training now. Both the member for Yorkview and the member for Riverdale raised the question of staff training. I would like to say at the outset that the staff are the ministry's most valuable resource and that the effective utilization of human resources is the key to achieving ministry goals. The training needs of our correctional officers is never-ending because of new technologies and a more difficult inmate population. This responsibility is shared by the parent institution where the correctional officers are employed and the institutional staff training branch of the ministry.

The fiscal year 1981-82 has been a year of budget constraints. In spite of the constraints imposed on many departments and institutions, the staff training branch suffered no budget cuts and was allotted the moneys requested for the training of correctional staff, as was the case in the previous year. Last year an additional \$1.3 million was spent on staff training.

4:20 p.m.

Rather than continue with my remarks on this issue, my staff has prepared a 10-minute slide presentation. I would like to call on John Duggan to present that now.

Mr. Duggan: There was a question relating to the provision of staff training across Canada in other provinces. We did a little bit of research into that, and one result of our examination is

that there appears to be almost as many solutions to the problem of what is good and appropriate training for correctional staff as there are provinces. Their changes in philosophy appear to be quite frequent.

My remarks in this presentation are addressed only to the institutional division of this ministry. The community division has its own staff training branch; therefore, this only relates to institutions. I would like very briefly to share with you some comparisons, odious as they may be, with other provinces. I will run through them.

In Newfoundland they spend three weeks in training for staff. This is all within the first year. This information came from the Compendium of Training and Education from Corrections Canada in 1981. In Newfoundland they provide three weeks training at the institutional level. There is no residential training provided.

In Prince Edward Island they get three weeks at the institutional level and then a period of six weeks at a course run in conjunction with the Atlantic Police Academy. In Nova Scotia they provide three weeks at the institutional level and nothing in a residential setting. New Brunswick provides one week at the institution.

Quebec provides two weeks at the institution and no residential training. Relating to my remarks concerning philosophy, they are examining the provision of staff training for 1982 and I believe they will be making some changes in the delivery of it.

In Manitoba they provide two weeks on-the-job training when someone is first hired. Then subsequently, depending on the numbers and the amount of money they have available—this is the information we have—they get one or two weeks in a classroom setting in the first year. They do have a pre-employment correctional officer training which has student status. This can be for 20 or up to 40 weeks, but I would stress it is not paid. It is something like the Centennial College program we have in this province. It is an educational placement, and at the conclusion of that placement, those people do get preferred hiring status into the correctional system in Manitoba. The actual provision of on-the-job training that is paid for is two weeks on the job in the institution and then one or two weeks in a residential setting.

Saskatchewan provides 11 weeks at a provincial training centre and five weeks at the institution. Alberta provides five weeks basic training at the institutional level and then it has a self-study module package, something like a correspondence course. In this province, we

had a similar correspondence course package a number of years ago which, for a number of reasons, we dropped. When we dropped that package, we increased our residential package from one week to three weeks in the first year.

British Columbia has a package very similar to our own in that it is four-phase. They call them "blocks" but they have a four-phase delivery: three weeks orientation and on-the-job training when someone is first hired and then three weeks at the Simon Fraser Academy in Vancouver. Then they go back to a further period of on-the-job training and a final two weeks at the Simon Fraser Academy.

With our own staff training package, very briefly—the slide and sound package will address this more fully—we have a four-phase program somewhat similar to that in BC. We have orientation and on-the-job training conducted at the institutional level during the employees' first six weeks. We then send them away for a two-week residential package at the regional facility. They come back for their post-basic development at the institution and then the final period, six to nine months after they were hired initially, is a residential package of one-week consolidation.

As a matter of interest, we do sell a number of slide-and-sound training packages which we have developed, using our own resources within the branch to other provinces. They have been very well received and we also sell them copies of our manual of standards and procedures.

I would like to ask your indulgence for a very brief slide-and-sound package we have prepared. We hope to use this at the American Correctional Association congress later this year to give an illustration of just what our staff training delivery is like in Ontario. It takes about 10 minutes. Could I ask Mr. Featherstone to run the machine? It is meant to give you a solid overview of the delivery of staff training within this division.

The committee viewed an audio-visual presentation at 4:26 p.m. [see appendix, page J-44].
4:38 p.m.

Mr. Renwick: I assume, Mr. Chairman, that was picked up on the recording all right.

Mr. Duggan: I will deliver a copy of the script to the gentleman from Hansard.

Mr. Chairman: Mr. Minister, would you carry on with your reply?

Mr. Renwick: If I have to leave here to speak in the House, please carry on and I can pick it

up. I will have to leave for 10 or 15 minutes at some point.

Hon. Mr. Leluk: You are leaving in 10 or 15 minutes?

Mr. Renwick: No. I will leave after 5 o'clock.

Hon. Mr. Leluk: There is the question of native programs, and I would definitely like you to be here for my response.

Maybe I can make some remarks about the statement made yesterday by the member for Riverdale, in which he indicated that there had been reported to him an increase in the number of injuries to correctional staff reported to the Workmen's Compensation Board. Particular concern was expressed that the incidence of injuries to staff inflicted by inmates was increasing. I would be the last one to suggest that there is no inherent danger in the work performed by the correctional staff and that our officers are not working with a more difficult inmate population.

All persons who are employed in this field must be alert constantly to the risk of possible injury. There have been some very unfortunate incidents over the years which have resulted in serious injuries to our staff; thankfully none of them has been fatal. I am certain that we all share the hope that this particular record will remain intact.

Each year the ministry prepares a complete analysis of WCB claims, and this analysis isolates inmate-related incidents or accidents from others. The reports are shared with the joint union management health and safety committee which has been established in all our facilities. The report for the 1981-82 fiscal year has not yet been completed. However, I will be pleased to furnish a copy whenever it is available. The statistics for the 1980-81 fiscal year reflected a small decrease in the number of accidents, both inmate-related and otherwise, over 1979-80.

I want to assure the member for Riverdale and members of this committee that we are very concerned about the safety of our staff and place a very high priority on this particular matter.

Mr. Renwick: Could you in the 1981-82 report actually relate the inmate-occasioned injuries in compensation solely to the correction staff, as well as whatever other information you have?

The information I had was that from looking at the report there was no way you could say, in relation to those exposed to the inmate hazard, that there was any sort of statistical relationship

to it, that it was an across-the-ministry relationship. I am not asking that you discard that. I am just asking that perhaps you could add that other piece of information.

Mr. Spensieri: If I can just interject as well, Mr. Chairman, our information in fact is that the manager of staff relations has been specifically instructed by the ministry to include in the statistical analysis of compensable claims general staff such as office staff, etc., who would not be subject to the same degree of peril as the people who come into contact with inmates.

Perhaps if it is the practice to lump together all compensable injuries in the various categories of personnel, that practice ought to be discontinued. We would appreciate receiving statistics which deal solely with people who come into contact with inmates.

Hon. Mr. Leluk: I am advised by my staff that we can break those down separately.

Mr. Renwick: I think that would be helpful.

Hon. Mr. Leluk: It may be somewhat late to do that for this year's annual report, but we can break that down for you, Mr. Renwick.

Mr. Renwick: It would be helpful.

Hon. Mr. Leluk: I would like to address at this time the question of native programs which Mr. Renwick asked about yesterday. In his remarks he stated that he was disappointed at the limited space allocated to this issue in my opening remarks. He said he had brought it to my attention and I want to point out to the member for Riverdale that that is true, he did, and I listened very carefully. As a result of those remarks, I did have members of my staff in the community programs division prepare a slide presentation of about 10 minutes duration to address this very issue.

Before we proceed with that presentation, I would like to say that we continue to develop programs to meet the special needs of the native offender, whether he be a native living in an urban environment or a full-time resident of a remote reserve. I am pleased to say that as a ministry we continue to invest in and to expand our programs for native offenders. In the 1981-82 fiscal year, I might say, we provided \$1 million to these programs.

Last summer I had the distinct pleasure of personally visiting three remote reserves with members of my staff. We met with the chiefs and the band councils at the reserves at Grassy Narrows and Sandy Lake and with the chief at Pikangikum. I had a particular interest in visiting Pikangikum because of the gasoline-

sniffing problem that is very prevalent on that reserve. I also visited the community resource centre operated by the Red Lake Indian Friendship Centre in Red Lake. This is a CRC for native inmates.

During my visit to Kenora I visited the Kenora Ne'Chee Friendship Centre and the Indian Friendship Centre in Thunder Bay when I was there. Also, I had the pleasure of visiting the community resource centre for native women operated by the Ontario Native Women's Association in Thunder Bay. Last year I was honoured to be their guest speaker at their annual conference here in Toronto.

I would now like to call on Arthur Daniels, who is the executive director of the community programs division, to make the slide presentation on the native programs.

Mr. Daniels: I am sitting over here so that the commentary I make will be picked up. It is a great pleasure to address the committee and to outline some of the initiatives that have been taken by the Ministry of Correctional Services for the native offender in Ontario.

In 1975 there was a major conference in Edmonton, a federal-provincial conference on the native person in the criminal justice system. Out of that conference came a very important group called the Ontario Native Council on Justice, which was established in 1977. Many of the programs we are going to review today are really a genesis of both Edmonton and the native council and are co-operative efforts between the Ministry of Correctional Services and the native organizations in Ontario in addressing the needs of the native offender, whether he be incarcerated or on probation.

The logo you see there is very important to the ministry and to the native groups. It represents the co-operative effort between the ministry, which is one of those 10 feathers on the bottom, and the nine official native agencies that are represented on the Ontario Native Council on Justice. The circle represents the earth, the wholeness, the existence of man. The uplifted peace pipe is fairly obvious in terms of peace and understanding.

The Ontario Native Council on Justice, as I mentioned earlier, was established in 1977 for the development of justice policy pertaining to native people and, in so doing, to identify problems and propose solutions. The membership of the council is the Association of Iroquois and Allied Indians, Grand Council Treaty No. 9, Grand Council Treaty No. 3, the Ontario Federation of Indian Friendship Centres, the

Ontario Metis and Non-Status Indian Association, the Ontario Native Women's Association, the Union of Ontario Indians, native inmates from provincial institutions and the Native Law Students' Association. As we proceed through the presentation, you will see how each of these groups has a stake in the offender services and actually delivers a number of programs itself.

Part of our work with the council is found in two pieces of research conducted jointly by the ministry and the native council. Dr. Birkenmayer, who spoke earlier, and Stan Jolley, the coordinator of the program, co-operated in two pieces of research, of which that logo is actually part. Some of the program directions find their genesis in this report.

Native offenders are involved in many of the ministry programs—on community services, inmate work programs, the halfway houses and restitution programs. We have—and this is important—full-time native probation officers who work with native clients, both in urban settings and on reserves. Native probation officers also supervise the work of native probation aides. We will see later the importance of the assistant native probation officer on remote reserves in northwestern and northeastern Ontario.

This is one of the full-time native officers and this is Bill Johnson at Ohsweken, who works with our native alcohol counselling program and is the full-time native probation officer on that reserve. He supervises community service orders and client counselling, but his strength and his background rests in alcohol counselling.

This is at Summer Beaver, a very familiar sight to the native probation officer and the native officers who work in northern Ontario. They fly into reserves and, of course, the part-time officer remains at the reserve all the time providing counsel and supervision. The native officers, who cover a large territory, are involved in a fly-in. You can see the remoteness and the distance of our programs.

These full-time native officers are employed: Fort Frances, Dave Bruyere; Peterborough, Doug Williams; Sarnia, Preston Williams; Walkerton—Walkerton would look after the Cape Croker and Saugeen reserves—Ray Auger; and Toronto, Ralph Nahmabin. Grassy Narrows, Islington and Pikangikum have full-time officers under contract with the band councils as opposed to civil servants; they are full-time native probation officers.

4:50 p.m.

In addition to the full-time officers, we have 30 native part-time probation officers, probation aides, under contract with the ministry and in co-operation with the local band council. It is a joint recruitment of importance in training and support.

The part-time native probation aide provides counselling, supervision, support, services in the native language and support for the native culture. A lot of work on the reserve is community service, crime prevention and just a befriending role to the offender group.

Here we see the staff coming in at Summer Beaver and in remote reserves or communities like Armstrong. This would be a native probation aide, I think, at Lansdowne House. The locations are numerous. There are over 30 locations where we have these staff employed on a part-time support basis. You can see that most native reserves with any population have the benefit of a native probation officer—Armstrong, Beardmore, Cat Lake, Fort Albany, Fort Severn, etc.

The list goes on to Attawapiskat, where we had a very innovative community service order program involved with the production of potatoes on the island outside Attawapiskat. It was both self-sufficient and a good use of the native offender who remained on the reserve rather than being moved to an urban area or to a provincial jail. You can see that the coverage in Ontario is quite wide.

The community service order program began in 1977-1978. A definite effort in the ministry was made on behalf of the Ontario Native Council on Justice to establish a particular CSO program for the native offender. Community service is an alternative to imprisonment and provides an opportunity for the offender to remain in the community and do good works—helping the band council, helping out in community work and recreation, assisting native Little Brothers. The number of jobs in the community is enormous.

In the community service order program in Ontario, for example, there are 2,000 separate job placements available for offenders. A vast number of jobs are also available for the native offenders so that we can match the offender to a job he will succeed in, a job with which he will complete his community service successfully and achieve a sense of responsibility as well as a sense of repayment to the community for harm done. Part of it would be manual work, craft work. Bill Johnson has a number of staff who work at the Six Nations day care centre as

conditional or nontraditional volunteers. It is part of their work order that they be there.

Native community service orders are supervised in the London area by the N'Amereind Friendship Centre and in Kenora by the Ne'Chee Friendship Centre, which the minister visited recently. He met with Dorothy Favelle who is the native CSO worker up there. That one is spelled wrong. It is Ohsweken and the native community worker is Bill Johnson. In remote reserves each of the 30 to 40 staff we mentioned is a community service order co-ordinator as well as a probation officer.

The native inmate liaison program is one of the important programs launched as a result of the study on the native offender in prison or jail. They do not have visits because they are so far removed from their home reserves. They lose contact with their homes, relatives or any support systems they may have. They become separated from their culture. They are also not aware of some of the programs available to them because of a language difficulty. They do not know they can get temporary absence, parole, and all the available programs that people would understand, but which may not be as well understood by the native offender.

The native liaison program puts a full-time native worker into prisons having a preponderance of a native population. This program is the result of a co-operative effort with the council and as a result of research. It recognizes the cultural and spiritual needs of the offender, organizes self-help groups, links the native to the community and begins his post-release planning, his return to the reserve or to the urban area.

Events such as pow-wows, sweat lodges and sweetgrass ceremonies are all part of the native cultural experience within institutions. This was a recent Native Sons event at the Ontario Correctional Institute in Brampton. You can see Millie Redmond who is probably well known to a number of people and who operates Council Fire. That is Chris Summers, the native inmate liaison officer for the Metropolitan Toronto area, working in reserves in the Toronto district.

The native inmate liaison officers are now employed full-time through the Ne'Chee Friendship Centre in Kenora, the Indian Friendship Centre in Thunder Bay, the Ininew Friendship Centre in Timmins, and the Native Canadian Friendship Centre in Toronto. These are agencies which provide the workers. Funds, supervision and training are provided by the ministry.

With respect to native self help groups, native offenders can assist one another in the development of self-esteem and self-worth by getting back to their cultural roots. They can develop improved conduct and behaviour through group support, and native cultural support through pow-wows, sweat lodges and native worship.

This is a recent Native Sons meeting in Guelph, both a spiritual and a social event. This is a self-help group of native inmates. It is both a cultural and a family experience. The families of native offenders and native groups are welcome to join in the program. This is actually in the facility at Guelph.

We have native self-help groups at Guelph, the Ontario Correctional Institution, and the Thunder Bay and Monteith correctional institutions. The native inmate liaison officers are working on developing these programs in other locations as the native population increases.

On native residential services, we have over 51 community residences in Ontario for offenders as a transition from the institution to the street. Part of this program recognizes the specific needs of the native person to be supervised and dealt with by native people.

We have programs for the mentally handicapped, for women and for women with children. The community resource centre program is one that is very adaptable and can be adapted to the varying needs of the offender group. We have five such houses. There is Pines Camp at Minaki; Red Lake community resource centre in Red Lake operated by the Friendship Centre; Ke-Shi-la-Ing in Thunder Bay—that means “this is where we stay”—which is operated for native women by the Ontario Native Women's Association.

Magwaganigamig is Rainbow Lodge in Manitoulin Island operated by Beatrice Shawanda and the Native Women's Centre in Hamilton. Finally, this is a centre that is not entirely directed towards native offenders although it is in Thunder Bay and would have a mixed population. This is the Kairos Centre, formerly operated by Sister Gail McDonald.

Pines Camp is a bush camp operation near Minaki for 15 native offender residents. It is a work-training program involving life skills and a woodcutting program, both for residents of the camp and native community service order clients. This was the installation of the camp at Pines a number of years ago. It was put in place by the offenders themselves and is a permanent facility. You can see the woodcutting skidder operations which are all related to finding work in the

lumber industry in that area. The offenders are working towards a career in the lumber industry.

Red Lake Centre is for 12 offenders and is just outside the town of Red Lake. It is operated by the Friendship Centre and the facility is identical to that at Minaki. It stresses Indian heritage and alcohol counselling. This is the superintendent, the director of the CRC, Frank Kaminawash. Again, this is a similar program of woodcutting.

Here is “This is where we stay” in Thunder Bay. The director of that program is Edith McLeod, who has been a leader of native women in Ontario for many years. Her facility is an eight-bed residential home in Thunder Bay. It provides employment, education, rehabilitation, native awareness and pride. With respect to alcohol and solvent abuse, a number of the offenders who are victims of gas sniffing reside at Edith's house and she does quite a bit of good work with that very difficult client group.

5 p.m.

This is a roomette at the Thunder Bay women's centre. Again, we talk about education and training programs. With her back to you is Edith, with one of the native offenders and one of her workers. Again we talk about education and training programs. With her back to you is Edith, with one of the native offenders and one of her workers.

Rainbow Lodge, operated by Beatrice Shawanda is a co-educational residential facility for alcoholics based on Alcoholics Anonymous principles. It also has 27 different outreach programs for alcoholic native offenders.

The Native Women's Centre in Hamilton is available for native offenders in the Hamilton area. They have several native counselling programs across the province: Council Fire, United Native Friendship Centre, Kawartha Metis and Non-Status Indian Association, Kenora Fellowship Centre and Grassy Narrows Band Council.

Council Fire is an interesting one in Toronto and is operated by Millie Redmond under the financial support of the ministry. It involves several programs for native offenders and natives in general in the Metropolitan area who require a place to stay, some help and a good meal. You will see that through the various slides that will come forward.

Once a week there is a major feast in terms of supplying good food. As well, spiritual counselling, life skills, job skills and crafts are imparted to the native in the urban community. There is a clothing lending library and a job search and job

counselling program. The United Native Friendship Centre in Fort Frances has alcohol and solvent abuse counselling and drug counselling for natives in that area. The Kawartha Metis and Non-Status Indian Association in Burleigh Falls near Peterborough is a week-long intervention program for native offenders. This involves crafts, etc.

Grassy Narrows Band Council is a multi-pronged attack at both prevention and support services through street patrols, crisis intervention and our support of a recreation program. The research on the native offender indicates a strong need to supply alternatives for leisure time. Recreation programming is a very important preventative aspect of native programming.

That is a shot of a native offender at Kairos in Thunder Bay. The young lad shown is a nextdoor neighbour. Sometimes when we talk about community residences, people begin to fear them coming into a neighbourhood. Actually, neighbours find these homes are a welcome addition to the neighbourhood and not something to be afraid of.

That is a summary of the very many native programs in Ontario already under way. Many more will be starting up in the coming year. We will be working with a group of people at White Fish Bay on a recreation program, a further development of the inmate liaison program and many more programs that the ministry and the native council will work on jointly.

Mr. Renwick: I assume this will be recorded.

Mr. Chairman: Yes. Mr. Renwick, I know both you and Mr. Eves have to go into the House to speak to a bill, and he is gone.

Mr. Renwick: The whip from my party will come and get me.

Mr. Chairman: Mr. Eakins has been patiently waiting. He has one matter in particular. The minister has quite a bit to reply to you. Would it be better scheduling to deal with Mr. Eakins at this point, when you are likely to have to leave, so you would be back either today or tomorrow for the minister to reply to you.

Mr. Renwick: I will not be here tomorrow. I go to Vancouver tomorrow, but I would not like to interrupt the minister's response because I would like to be able to read it as sort of bedside reading.

Mr. Chairman: Mr. Minister, you might like to reply to Mr. Renwick and carry on with your remarks.

Mr. Renwick: I do not want to suggest some kind of priority for it. Just before you go on, Mr. Minister, as I am afraid I will forget it otherwise, it would be extremely helpful if you would circularize your institutions and community resource centres and the members of the assembly, letting them know about the right of members to visit the institutions, which is contained in the statute. I would assume there are probably a number of members who are not aware of it or the precise terms of it. It would be helpful because I really do believe some of my colleagues in the caucus may show an interest in their own localities. It would be helpful to everybody.

Mr. Chairman: Perhaps the minister would read that section.

Hon. Mr. Leluk: Do you want me to read that section?

Mr. Renwick: It might be helpful if the members were aware of the right of the member to get access to the institutions.

Hon. Mr. Leluk: This is covered under the Ministry of Correctional Services Act 1978. It is section 46 which states: "Every member of the Legislative Assembly of Ontario is entitled to enter and inspect any correctional institution, community resource centre or other facility established or designated under this act for any purpose related to the member's duties and responsibilities as a member of the Legislative Assembly, unless the minister determines that the institution, community resource centre or facility is insecure or an emergency condition exists therein."

Mr. Renwick: Thank you. I think that might be helpful.

Hon. Mr. Leluk: To carry on then with my remarks with reference to Mr. Renwick's comments yesterday on the development of the fine-option program in Ontario, I would like to point out the legal basis of the implementation of a fine-option program rests in the Provincial Offences Act, Revised Statutes of Ontario, 1980.

It states: "The Lieutenant Governor in Council may make regulations establishing a program to permit the payment of fines by means of credits for work performed, and, for the purpose and without restricting the generality of the foregoing may,

"(a) prescribe classes of work and the conditions under which they are to be performed;

"(b) prescribe a system of credits;

"(c) provide for any matter necessary for the effective administration of the program,

"and any regulation may limit its application to any part or parts of Ontario."

This is somewhat similar to earlier proposals for amendments to the Criminal Code, which have not yet been passed into law. There is no explicit legal basis for the fine-option programs for Criminal Code offences or for offences prosecuted under the authority of the Criminal Code, such as offences under the Indian Act and local band bylaws made pursuant to the Indian Act.

Basically, the fine-option program, as we expect it to be embodied in regulations, is focused on people who have been ordered to pay a fine and who cannot pay the fine. Without the fine option program, they would ultimately face a possible jail term for noncompliance with the court order. Instead of going to jail, the fine-option program would give them an opportunity to work off this fine by performing a specified number of hours of meaningful work under the supervision of a community agency. The program would be piggybacked on to existing community service order programs to provide a solid basis for expansion without duplication.

We have carefully examined the Saskatchewan model referred to by the member for Riverdale (Mr. Renwick). Our system will be somewhat different, partly because of procedural differences in the way our courts process minor offences. We have learned a great deal from it and will embody a good number of its features.

My ministry has been working very closely with the Ministry of the Attorney General to assist them in developing the necessary regulations. We expect to hear from them in the near future and we hope to be able to implement fine-option programs in select areas as soon as possible and to expand on those programs to other areas of the province as rapidly as we can.

We have already laid the basis for development and expansion of these programs by working with our various community groups, including a number of native organizations. We have held two workshops for native people who are involved in the criminal justice system to make them aware of the fine-option concept and to lay the groundwork for the extension of fine-option programs once the regulations are in place.

We have for some time been working on a fine-option program in Hamilton. It is based on

the temporary absence provisions of our Ministry of Correctional Services Act, but the expected regulations under the Provincial Offences Act will provide a solid basis for a wider application of the program throughout the province.

5:10 p.m.

I might just point out here that, as Minister of Correctional Services, I have been very supportive of such a program in this province and have publicly stated that on many occasions.

I also believe that Mr. Renwick—and I want to be quite clear here when I quote him—said that there was too much bureaucratic control of community groups. I would like to point out that we feel there have to be some controls.

We fund these community groups with public funds and there must be some accountability. We do have inspections and I believe I mentioned yesterday that we also have some audits of expenditures by these various community agencies we contract with.

I do not believe that the controls are excessive. I believe Mr. Spensieri stated yesterday that the community groups were not subject to enough controls. I believe that, as a ministry, we strike a balance between these two extremes.

Mr. Renwick: Between Mr. Spensieri and myself. That is a good balance.

Hon. Mr. Leluk: I also believe that you asked about our relationship in this ministry with the Ministry of Government Services.

It should be pointed out that our staff have ongoing discussions with the staff in the Ministry of Government Services regarding available sites for possible construction, leasing of property, renovations to existing older facilities and other minor and major capital projects.

Is that what you were referring to?

Mr. Renwick: Yes.

Hon. Mr. Leluk: We do have this ongoing discussion with the staff of that ministry.

I also believe you raised some concerns about statistics, stating that there were no—

Mr. Renwick: Excuse me just a minute on that Government Services question, if I may. Do they have some people within the Government Services branch who are knowledgeable about institutional development, settings and that type of thing?

Hon. Mr. Leluk: Yes, I believe that is the case. John, do you want to elaborate on that?

Mr. Duggan: Perhaps Mr. Algar could respond to that.

Mr. Chairman: Would you state your name for Hansard, please?

Mr. Algar: Michael Algar, executive director of planning and support services.

The Ministry of Government Services has a program executive, an account executive if you wish, who is a qualified architect and who has worked for that ministry for a number of years. He left us for a short time but he has been handling the account off and on for at least eight years now. I think he is a very experienced person. As I say, he is a qualified architect; he sees all our plans.

We have a qualified architect who works with him, Istvan Lendvay. Steve has written a five-volume book on correctional architecture which has been sent all over the world. I think that between our ministry and the Ministry of Government Services we do have a great deal of expertise available to us in correctional architecture.

Hon. Mr. Leluk: Just going back to what I said earlier, Mr. Renwick raised the question of the trends from incarceration. I believe you stated that this was strict "mythology," if I can quote you. Is that correct?

Mr. Renwick: I think I may have used some dramatic term such as that.

Hon. Mr. Leluk: Very dramatic. You indicated that we would be building more institutions, more people would be moved out of them, we would have an increased probation and parole load and there would be more CRCs built, just as a result of the increased work load.

For example, the crime rate is up. We have an increased number of police officers whose activity has increased as well. We have a number of increases in judicial manpower. The work load is up and I think this is the kind of trend we are going to be experiencing.

Mr. Renwick: On that point, I was just anxious to get some statistical handles on all of those.

Hon. Mr. Leluk: Yes, I know you were. You did express some concerns about the statistical data that was available. I think you mentioned there was no coherent statistical data from year to year.

Possibly we could call on Dr. Birkenmayer. Andy, would you like to come forward and speak to this statistical data that Mr. Renwick is concerned about?

Dr. Birkenmayer: Perhaps, Mr. Chairman, I could use an overhead projector to make some sense out of this rather than pass this around.

Mr. Chairman: Doctor, as you are speaking, could you use one of the microphones so your voice can be picked up?

Dr. Birkenmayer: Yes, sir. These are the data used by Chan and Ericson.

These are the long-term trends that we collected very small samples from, starting in 1972. I must caution everyone that I compiled this data at the request of the federal Solicitor General and found the definitions I was asked to use made the data from year to year and country to country not comparable.

For instance, the 1972 data I used in that questionnaire is not comparable to the 1978 data used; it is apples and oranges, because the 1972 data is a static figure for a given day and the 1978 data is actually average counts.

There are some real dangers in using these sorts of figures because they are not admission sensitive, as we saw earlier, and a very small proportion of the count day to day is accounted for by a very large proportion of admissions. They are not sensitive to movements of those small groups that account for small amounts of time.

Let us say we eliminate 2,000 or 3,000 people of the group that comes in for under 30 days. They may not be reflected in the average daily count in a significant way.

Mr. Renwick: Thank you very much for that magnificent series about the minister shown on educational television. It sounded almost perfect for the deputy minister to confuse the minister about.

Mr. Mitchell: You can always count on Jim for something succinct.

Mr. Renwick: It is a very difficult field to grasp, I think.

Dr. Birkenmayer: Mr. Chairman, it is very difficult.

I have similar data for the same time period from the admission figures into institutions and probation. The bottom line is the admission figures into probation, the middle line is the admission figures into institutions, sentence admissions, and the top line is the aggregate of the two.

5:20 p.m.

The long-term trend in increased use of probation started somewhere around 1965. The long-term trend in decreased admissions into institutions started some time in 1955. The reason we have no data for probation prior to 1962 is because I could not find any. It belonged to a different ministry at that time.

A variety of things have happened to probation admissions during that time. For instance, the probation orders were allowed for people who had prior offences, which up to about 1972 was not the case. With minor variations, as there always are, you can see it has been more or less constant in flow through to the system.

Mr. Renwick: I do appreciate that and I would hope that the statistical information could somehow be refined and made more meaningful in a consistent way for us as each year goes by. As a lay person I found the statistical information quite confusing. Also, I had no real sense of the degree and extent of the meaning of it in a way that would make sense to me.

Mr. Campbell: Perhaps, Mr. Chairman, Dr. Birkenmayer might wish to address briefly some of the changes that we intend to make in the forthcoming annual report.

As a result of possible confusion with the old method of reporting some of the numbers, we have gone to a new system of reporting in the forthcoming annual report. This should provide more complete information, narrative and explanation of exactly where the numbers are coming from and what they mean.

I do not know if Dr. Birkenmayer has anything to add to that in particular.

Dr. Birkenmayer: The only thing I could add is that we wanted to change a lot of formats in response to people who had trouble understanding the great volume of numbers in the annual report. We tried to introduce more graphics and explanations and to make some of the terms more meaningful. There are a lot of definitions involved in the text that will help the reader to understand.

Mr. Chairman: Mr. Minister, would you carry on with your reply?

Hon. Mr. Leluk: Mr. Chairman, I believe that concludes my remarks in response to Mr. Renwick's comments of yesterday. In closing, I would like to thank both Mr. Renwick and Mr. Spensieri for their constructive and helpful comments. I can tell you that they are appreciated and that our staff will be considering some of the things that have been brought before this committee.

If there is any way in the future that our staff can be of service, Mr. Renwick, I am sure they would be more than pleased to hear from you and to be of assistance to you.

Mr. Renwick: I am certain of that, Mr. Minister. I have never had any concern about

that. I have always been treated both courteously and promptly by the ministry on any matters I have ever had to raise with them.

I did want to express appreciation regarding the suggestion about the conference in August. Subject to my timetable, I would be quite interested in participating.

During the lifetime of this parliament, I would seriously hope that some effort would be made to take some of us to northwestern Ontario to get some handle on the native people's problems, questions and so on.

Most of the graphic information and the narrative was very interesting and helpful, but it covered a lot of things of which I was totally unaware. I am not, in any sense, able to make any critical comment; I just appreciate having the information.

Hon. Mr. Leluk: I am sure that our staff could be helpful in arranging something like that if you would give us a time and date.

Mr. Renwick: I think Mr. Spensieri had indicated, when we chatted about this earlier, that he would be interested. I feel that other members, not only of this committee, might be very interested.

There has always been this mooted story of a member's trip, such as we had some years ago, and it might be possible to tie in some part of the agenda with that if it ever develops.

On vote 1601, ministry administration program; item 1, main office:

Mr. Chairman: Thank you, Mr. Renwick.

We have concluded the critics' remarks and the reply with regard to vote 1601, item 1. May we carry that and go on? Mr. Eakins is interested in a particular topic which I believe is in vote 1602, if I am correct, so could we move along through that and take it in order?

Mr. Mitchell: I did have one question about the minister's statement, if I may.

Mr. Chairman: Briefly, if you would.

Mr. Mitchell: I was interested because it was really supplementary to a question Mr. Spensieri raised about the comment on page 14 regarding the possibility or feasibility of using available public buildings in the province, such as schools.

I cannot recall specifically what Mr. Spensieri's comments were. I would like to get an opinion from the minister. Has society changed its thinking that much?

You are talking about the feasibility of using schools. Schools are usually community facilities. Sure, they may be ones that have closed but

they are usually located within a neighbourhood community facility.

I do not know, but I have a feeling that society really has not changed, that it would not accept that. Am I wrong or is society in fact changing in its attitude to what might be involved in a community? Usually the location of public buildings and schools are such that I do not feel the average community would really respond favourably to it.

Hon. Mr. Leluk: I might say that I was somewhat surprised by the prominent placing of those remarks in the press. We have a responsibility to the taxpayers to exhaust all possible alternatives in finding additional accommodation space which is very much needed for inmates before we move ahead with a major capital project of building a new maximum security facility, possibly with 500 beds or so.

Among the alternatives we have been looking at, this is one area where the staff have taken a look. I do not think we were misquoted in the *Star* today by Mr. Haliechuk, but certainly we have not found any accommodation suitable to our needs.

I doubt very much that, like the remote work camps, this would be a feasible alternative. Any minor renovations to the structures themselves to bring them up to even the minimum or medium-security standards would be very costly. I do not believe that the use of abandoned neighbourhood schools is a very feasible alternative, but, as I say, we have looked at that as a possibility.

Mr. Mitchell: I respect the ministry's attempts to save dollars if there are buildings available. Frankly, I do not think society has changed that much. I had first-hand experience in our municipality where we were providing jobs after incarceration. There was feedback from that. Unless my impression of society has changed, schools, in particular, recognizing they are usually a neighbourhood facility, have not changed.

5:30 p.m.

Hon. Mr. Leluk: I would just like to point out to you that when we talk about the community and whether it has changed in its thinking we have on any given day some 35,000 probationers out in the community. Many of them are working in the community and we feel very strongly that the community should be involved.

Mr. Mitchell: But the visibility factor is not there as it is when you make it a building.

However, I do not wish to prolong it. I was just expressing a feeling I have out there.

I think we should say from this side, from the information we were given today, that I am more aware of what you are doing on the native side. I would like to compliment you for what you provided to us. I think Mr. Renwick was quite correct. There are a number of facilities I was not even aware existed.

Mr. Chairman: Are there any other comments with regard to vote 1601, item 1?

Mr. Renwick: Yes there are, if I may. The minister's advisory committee, chaired by Mr. Eastaugh, is under this vote. How many times do you meet with them? What role do they perform? Did you get an annual report from them? Do you get a statement at any time from them?

Hon. Mr. Leluk: Yes, maybe I could have Archie Campbell respond to that.

Mr. Campbell: They generally meet two days a month depending on what projects they have. They have taken on different jobs at various times over the years. They usually take a particular topic and narrow in on a particular issue or particular program; something either they thought needed to be looked at or something the minister has asked them to take a look at.

The project they are currently engaged in is a review of the educational and related programs in the ministry. A number of them have gone around to various institutions. They are examining in some depth the whole structure of our educational programs in terms of focus, whether or not we need to realign our educational resources, whether or not we need to put more of a focus on basic work programs, literacy, adult basic education—things that are ultimately geared towards job related rehabilitation programs. That is their current project.

We do get reports from them. In relation to the educational review, we expect to have an interim report some time by the mid or late fall. Over the years, there has been a series of Minister's Advisory Council for the Treatment of the Offender reports. I know there was one very important one about 10 or 12 years ago on the rights of inmates. They have, over the years, taken various topics like that.

Mr. Spensieri: Just a general question, Mr. Chairman, on this 1601, item 1. There seems to be a tendency to have figures for estimates.

For instance, under the heading of services in item 1, one figure is presented to the justice committee under the general rubric of esti-

mates. Then when we get the actual figures such as under the item for services, we find that whereas \$208 million was indicated in the estimates say for 1980-1981, the actual expenditure was considerably less, \$148 million. That is almost 30 per cent less than what was presented to the justice committee.

I am just wondering if we can expect these kinds of discrepancies between the figures presented for estimates and the actual sums expended when they do eventually come out. Can we continue to expect this discrepancy in the figures and why would there be such a wide gap?

Mr. Campbell: Perhaps I could ask Mr. Algar to address the specific number you are referring to because I am afraid I missed it. Generally speaking we do hit our targets pretty close if, during the year, there is an unexpended expenditure.

For instance, if we suddenly have something develop in an institution that requires a great deal of staff overtime, then obviously there may well be an unexpected overexpenditure in that area. On the other hand sometimes we can have an unexpected underexpenditure.

The way things are balanced out eventually, as I understand it, and perhaps Mr. Algar could expand more in a technical sense, is by a series of orders under the Management Board of Cabinet Act. In other words, if we depart in any significant way from the actual printed estimates as they have been voted by this committee and by the assembly, then we have to go to Management Board to make any adjustments. I think generally speaking—I am not sure of the precise numbers—we came in the overall category somewhere within about— Perhaps Mr. Algar can expand on that.

Our record in terms of estimating is very good, but we do have occasional unexpected overexpenditures. Say for instance, there is an incident in an institution. I am thinking of one example where there was some indication of a security problem in an institution. The whole institution had to be searched. It was a large institution. That requires a huge amount of staff overtime.

Say there is an unexpected increase in the number of hospital escorts, over which we have no control. Say an inmate comes into our custody injured and we have to put a hospital escort on him around the clock—one or two people, depending on the circumstances—we simply cannot control that kind of overexpenditure and we have to spend the money.

On the other hand, we have to make that up

with an underexpenditure in some other area, or, if we are over totally, we have to go to Management Board for another supplementary figure, and then to the assembly. Generally speaking, we come very close, but there are some factors totally beyond our control such as a sudden increase in institutional work load or a sudden increase in any number of things that could happen in the institution. Perhaps Mr. Algar could expand on that a little more.

Mr. Spensieri: Just before he does, I think the corollary to that question really comes when you see such a glaring underexpenditure, 30 per cent less than what was estimated. I am referring, Mr. Minister, to the item on page 4 of the briefing material under services.

The 1980-81 actual figures show an expenditure of \$148,800. The 1980-81 estimates show an estimate of \$208,100. The underexpenditure was really 30 per cent of the figure presented to the justice committee in the previous estimates. I am just wondering, as a corollary, whether there really is that much fat in the padding of the figures that can be cut out, and what programs suffer when you do engage in that kind of discrepancy.

Hon. Mr. Leluk: I would call on Mr. Algar if he would to address those figures.

Mr. Chairman: Mr. Algar, before you do, might I ask you to restrict your answer to about two minutes because we have to break to go up to the House to vote on private members' hour.

Mr. Algar: Mr. Chairman, I have a little difficulty explaining that particular figure at this moment. I want to investigate something. We only saw these printed estimates yesterday and I would ask your indulgence to come back with that very large difference tomorrow. There must be a very good explanation.

Mr. Campbell: Might I also point out that the bottom line for the total activity is pretty close. We will come back to you with the precise information on that item.

Mr. Algar: I am very sorry, Mr. Chairman, I just realized I switched those two around in my own mind.

My deputy minister explained most of the reasons. There is one other very large reason for the differences between estimates and actuals and that is that elements of salary under negotiation at the year end are not included in the estimates. You will be asked to vote somewhere in the region of \$200 million in the Management Board of Cabinet's vote, in its contingency fund.

That contingency fund exists for salary increases which are still being negotiated.

As you know, our correctional officers' salary increases have not yet been awarded. One could guess that they could be somewhere in the region of \$15 million. That \$15 million is the kind of approximate difference that you see here.

Mr. Chairman: Thank you, Mr. Algar. I think what we had better do is leave this for Mr. Spensieri and the deputy minister to sort out between themselves. I think we should break now. We must be up for private members' hour.

Could you please, and I ask the PC members in particular, to get here quickly tomorrow

morning after routine proceedings so we can start the quorum going and then if you have to go to your offices for something, do so, because we are going to be really tightly pressed to get the six hours in by one o'clock or 1:05. So I would ask you to please get here so that a quorum can get started immediately.

Mr. McLean: How much time do we have left?

Mr. Chairman: We will have about one hour and 40 minutes, so we will have a push to get it done by one o'clock. We must get it done tomorrow so let us start early, not at 11:45.

The committee adjourned at 5:42 p.m.

APPENDIX

(See page J-33)

DRAFT SCRIPT FOR AUDIO-VISUAL PRESENTATION

CORRECTIONAL OFFICER TRAINING

The objective of this presentation is to introduce you to the institutional staff training branch of the Ministry of Correctional Services. Special attention will be given to the training of correctional officers. In the past 10 years, the evolution of the offender has produced a younger, better educated and more aggressive inmate.

This fact, combined with the proliferation of new technologies and conflicting correctional theories, has placed an increased demand on the training needs of the correctional officer. The Ministry of Correctional Services formally recognized these needs in its statement of principles which includes this quotation, "It should be recognized that staff is the ministry's most valuable resource and that the effective utilization of human resources is the key to achieving ministry goals." The responsibility of meeting those training needs is shared by the institutional staff training branch and the parent institution of the employee.

A new correctional officer in his first year of employment completes a comprehensive four-phase program of training. Phase 1 begins on the first day of employment and involves an orientation of the physical plant, the institutional procedures and the general responsibilities of the position. While each institution develops an orientation program tailored to its needs, many have incorporated an initial period where the new recruit is paired with an experienced correctional officer. By observation and hands-on

training, a rookie will develop the skills and good work habits he will require to perform his duties at an adequate level.

After approximately eight weeks on the job, the new officer will be sent to one of three strategically located facilities for phase 2 of his training. The basic training course is a two-week residential program which expands on the fundamental concepts and skills of the correctional process. The roles and responsibilities of the correctional officer are explained and reinforced. Subjects such as criminal behaviour, human growth and development, supervisory techniques and communication skills are taught. Practical information concerning custodial procedures and report writing is presented.

During these two weeks, the correctional officer also receives detailed training on emergency procedures, such as fire prevention and priorities, power failures, escape procedures and suicide prevention. Furthermore, officers are trained in the proper deployment of tear gas weapons. They participate in a practical demonstration, including personal exposure to the effects of tear gas.

Recruits are taught how to identify unauthorized drugs and their effects on abusers; how drugs are brought into the institution and what action should be taken when drugs are found. Each student is trained and certified in St. John Ambulance emergency first aid.

At the conclusion of the course, a performance assessment is completed by the instructor, who then interviews the student to discuss

his training and development at this point in his career. After this intensive session, the correctional officer enters phase 3, or the on-the-job practical application of what he has learned in the classroom. For the next six months, the correctional officer works on a regular shift in his institution.

During this time he will undergo specialized training in such areas as MSA air mask deployment and the procedures for escorting inmates outside the institution. As he is given increased responsibility, his performance is appraised on both an informal and formal basis. It is during this critical phase that a correctional officer must develop confidence in his ability to supervise inmates.

Phase 4 of the new correctional officer's training takes place at approximately nine months of service. The consolidation course is a one-week residential program which integrates both correctional theory and practical experience. It provides a forum where students can exchange ideas and evaluate their progress in relation to their peers.

This is a week of team-building workshops where the theories of leadership, decision making, communications and human relations are put to practical tests. The objective of the course is to help the correctional officer discover that, though he is completing the final phase of his first-year training, learning in the correctional field and the development of needed skills is a never-ending process.

The institutional staff training branch offers further training to employees through a number of optional courses, such as:

Advanced correctional studies: A three-day course which expands on information presented in previous program;

Effective communication: A five-day course examining communication styles and offering alternatives;

Effective writing: A three-day course which improves the quality of written communication;

Basic supervision: A five-day course which develops supervision skills for line staff supervisors;

Refresher training: A five-day course for correctional officers with five years' service.

THE INSTITUTIONAL CRISIS INTERVENTION TEAM TRAINING PROGRAM

This is a recent initiative which trains five-man tactical teams to diffuse and contain a distur-

bance or riotous situation through a disciplined show of force. The two-week program includes physical fitness training, a rappelling program which develops the individual's reliance on other team members, and planning and implementation training in tactical assault manoeuvres. History was made last year when the first female member of a tactical team in North America graduated from this course.

All ministry employees are also eligible to apply for financial assistance and time off to attend Civil Service Commission courses, or programs offered by recognized learning centres. Correctional institutions have copies of a recently released manual which specifies the policy and procedures of this program.

In the fiscal year 1981-82 the institutional staff training branch delivered or sponsored 343 courses, workshops and seminars, in which there were 3,685 participants. This statistic translates into 10,587 man days of training for employees of the ministry. However, this statistic does not include the ongoing training delivered at the institutional level by the institutional training officer.

The institutional training officer is appointed by the superintendent and is usually classified at a supervisor's level. He is responsible for all training in the institution. While his duties are many and varied, his major responsibilities include the orientation of new employees, the recertification of all first aid training and the teaching of cardiopulmonary resuscitation.

One of the training tools available to the institutional training officer is an innovative series of slide and sound programs similar to the presentation you are now viewing. These programs are an inexpensive yet effective option which allows the ministry to standardize both knowledge and skills training at the institutional level. These products are created by the institutional staff training branch with assistance from the Ministry of Agriculture and Food, which provides recording studio facilities. Several criminal justice jurisdictions in Canada have purchased copies of the programs to use in their training systems.

In 30 minutes a correctional officer can be retrained in the task of searching a cell. The following is an excerpt from the program entitled Jail Cell Search:

"Cells in jails require frequent searching at irregular intervals. In conducting such a search, you must equip yourself with a flashlight and an appropriate probing device. Your search begins

by your examining the grille work facing on to the corridor. All grille work must be checked, both top and bottom. Use your probe to check the bottom of the grille work, as visual inspection is very difficult.

"As you pass the probe along the grille-work frame, any article attached to the frame should be dislodged, or, at any rate, detected as an obstruction. This piece of hacksaw blade was found lodged between the grille frame and the wall. These are favoured places to conceal pieces of hacksaw blade as, if one is found, the inmate can deny ownership of it, stating that it was not found within his cell. Next, enter the cell from this point."

In this informational presentation, we have outlined a synopsis of existing correctional officer training. However, the institutional staff training branch must be a dynamic organiza-

tion, which continually develops new programs to meet identified training needs.

An ad hoc committee, chaired by Mr. W. Taylor, superintendent of the Guelph Correctional Centre, is presently examining the curriculum of correctional officer training and, from their recommendations, we hope to improve course content to meet the changing needs of the correctional officer.

It is recognized that the casual correctional officer is an integral part of an institution's operation. Recently a task force proposed a new training package for casuals, which is receiving final consideration at this time.

The long-term goal of the institutional staff training branch is to be located in a central training facility where students and instructional staff can work together to provide a standardized, performance-oriented training and development program of high quality.

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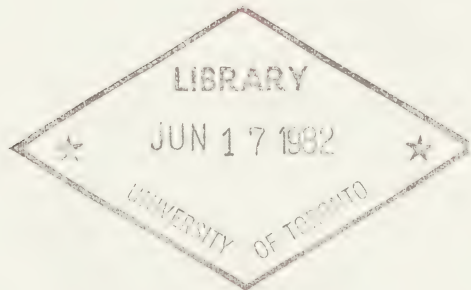
Ontario

No. J-3

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of Correctional Services



Second Session, Thirty-Second Parliament
Friday, May 28, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, May 28, 1982

The committee met at 11:28 a.m. in room 151.

ESTIMATES, MINISTRY OF CORRECTIONAL SERVICES

(concluded)

Mr. Chairman: Gentlemen, I see a quorum. We are continuing with the estimates of the Ministry of Correctional Services. We have one hour and 38 minutes remaining.

On vote 1601, ministry administration program; item 1, main office:

Mr. Chairman: Is there anyone else who wishes to speak to vote 1601, item 1, main office?

Item 1 agreed to.

Mr. Chairman: Does anyone wish to speak to items 2 to 7 inclusive?

Mr. Eakins: I just want to speak generally. Is this the appropriate time?

Mr. Chairman: No. I would think you would have put it under vote 1602, institutional program; item 2, care, treatment and training.

Mr. Eakins: It is sort of general so it is okay.

Mr. Chairman: But was your concern not with regard to a particular event or situation?

Mr. Eakins: Yes. That is fine; I will wait.

Items 2 to 7, inclusive, agreed to.

Vote 1601 agreed to.

On vote 1602, institutional program; item 1, program administration:

Mr. Spensieri: Mr. Chairman, in the previous estimates, there used to be a position within the ministry called the director of inmate appeals and director of inmate requirements. I note that position has been deleted by the ministry. Getting back to my earlier point on how our inmates' concerns and complaints are addressed, I am simply wondering why a crucial position such as director of inmate appeals would have been demoted in the general staff classification. How are inmates' concerns now co-ordinated throughout the ministry?

Hon. Mr. Leluk: I would call on John Duggan, executive director of our institutions division, to respond to that question.

Mr. Duggan: The inmate inquiry and appeals

function related directly to the temporary absence program, Mr. Spensieri. With the removal of that position, we passed the responsibility for handling all inmate inquiries and appeals to the four regional offices throughout the province. Any inmate who wishes to appeal or to make any inquiry with regard to a temporary absence, does it the way he did before, through the superintendent of the institution. That is then passed on to the regional office which carries out that function.

Mr. Spensieri: So you thought there was a redundancy in that position?

Mr. Duggan: We felt we were able to handle that position very adequately in the regional office and that position has now been gone for a year or so. Our experience has been that it has worked extremely well. We have had no problems at all in that area.

Item 1 agreed to.

On item 2, care, treatment and training:

Mr. Eakins: Mr. Chairman, I want to raise a question. I think it is appropriate I should ask some questions relating to the incidents which occurred at the Lindsay Jail. Ironically, the third event was a year ago yesterday. I feel there are some questions I would like to have answered and I know a number of people in the community would also like to have them answered. In my view, from what I have been able to read about the dismissal of the five guards, they were unfairly dismissed.

I questioned you in the House in regard to that incident, Mr. Minister. My question to you was, "Why were these people not moved earlier than they were?" You will recall you did not answer that question. You went on to say you did not condone force, which I do not either. You also referred to the fact that two grievance boards had ruled on a two-to-one decision against the guards and in support of the ministry.

Why were—what I would have to refer to as two despicable people—the prisoners not moved? Why was some action not taken earlier? It is my view that the third event, which led to the firing of these guards, would never have happened had these prisoners been moved.

Let me refer to the general outline of events as outlined in the grievance board's paper. I want to put what they state on the record. "In April 17, 1981, three prisoners with considerable federal time, that is, time served in federal institutions, were arrested by the Lindsay police. There was some apprehension on the part of the police that these prisoners might be dangerous and this apprehension was conveyed to the personnel at the jail to which they were taken.

"As is common when prisoners with federal experience arrive at a provincial institution, these persons, being Barnes, Brabant and another, made it clear from the beginning that they were tough guys. It soon became clear that they were not impressed by being at a provincial institution and wished to be moved to a federal one. They made this clear by being constantly verbally aggressive and abusive toward guards, throwing their meals and pails of urine at guards, boasting how tough they were and generally making excessive demands for what they considered to be their rights. On April 20, for example, Barnes was found digging a hole in the ceiling of a washroom, a pipe was pulled from a ceiling and fire alarms were set off."

It goes on to say: "It appears that Barnes took advantage of catching one of the guards in a one-to-one situation and continued to inflict injuries on him even though he was unconscious. A second officer, Officer Byans, suffered a broken jaw and miscellaneous injuries in the incident and was off work until November 1981. A third officer, G. Widdis, was badly beaten about the face and suffered numerous cuts. He was off duty for one week."

That was the event in April. Then there was the event which came along around May 24. In view of the knowledge the people at the jail and certainly your superintendent must have had, why were these people left in this situation to carry on in this way, resulting in the third event, which led your ministry to fire the guards and to say they used excessive force and didn't do other things? Why did this happen?

Hon. Mr. Leluk: I think you have made two or three points here. You stated that the dismissal of the five guards at the Lindsay Jail was unfair.

Mr. Eakins: In my view, yes.

Hon. Mr. Leluk: In your view. I would like to put on the record the fact that any discussions of firing of the five Lindsay Jail staff members must focus on the main reason for those firings, that is, the use of excessive force and other unpro-

fessional conduct, including failure to follow prescribed ministry procedures.

In regard to the use of force, let me make my position very clear. I fully appreciate that working in a correctional institution is a difficult and challenging job for both the line correctional officers and the managers. We are not operating Sunday schools for a collection of Mr. Nice Guys. The inmate population, particularly those housed in our maximum security institutions, includes violent, assaultive and very dangerous individuals. Among these inmates are persons accused and/or convicted of some very serious and repugnant crimes.

In all instances, we expect our staff to perform their duties in a humane, responsible and nonjudgemental way. In simple terms, we expect and demand a very high level of professionalism from all of our staff. I am proud to say that the vast majority of our staff deliver what we expect and demand day in and day out. They perform their duties in an exemplary and professional manner. Maintaining this level of professionalism often means remaining calm and reasonable in the face of verbal abuse and threats and the hostility which many inmates display towards all authority figures, especially policemen and correctional officers.

Professionalism requires staff to control their own feelings, to restrain their anger and to always act responsibly. They must refrain at all times from acting as judge and jury. They must refrain absolutely from taking the law into their own hands and meting out punishment or exacting vengeance.

Not infrequently, inmates attack either one another or staff, or behave in a manner which threatens the safety of other inmates and staff and/or threatens the safety and the security of the institution. On such occasions it may be necessary for staff to use physical force to protect other inmates or themselves or to ensure the maintenance of good order within that particular institution.

Inmates must not be permitted to intimidate staff or other inmates. They must not be allowed to take over or threaten the security of institutions, thereby endangering the safety of the general public. Our staff are running the correctional institutions of this province, not the inmates. If on occasion circumstances dictate that staff must use some physical force to restrain a rebellious or disturbed inmate or inmates or to maintain order within an institution, then they are authorized to do so.

I will support their actions fully, as long as

they exercise good common sense. However, I want it on the record that this minister and this ministry will not tolerate use of force by staff which exceeds ministry policy and guidelines. The fact that correctional staff work behind high walls and locked doors, removed from the public view, places a very special responsibility on them to avoid any suggestion that they have abused their power and control over others.

When, as in the case of the Lindsay Jail, a thorough ministry investigation and subsequent disciplinary hearings find that staff have abused this authority and trust in a flagrant manner, then severe penalties are called for. The ministry accepted its responsibility to protect the integrity of all responsible correctional staff by dismissing five officers, three from the bargaining unit and two from management, who used excessive force in dealing with inmates and failed to follow prescribed ministry procedures.

11:40 a.m.

After a review of that particular evidence, two separate grievance boards—the public service grievance board for management and the grievance settlement board for the bargaining unit—reached the same conclusion as the ministry had and sustained those firings. Under these circumstances, I see no point in rehashing all the evidence in these cases because the decisions to dismiss are final. To suggest that the ministry disregard the entire grievance process, Mr. Eakins, would be irresponsible.

If, however, members here today—I will get to your second question—wish to raise points of ministry policy which arise from these cases, then I am prepared to discuss them. I would like to deal with your second point as to why these inmates were not moved sooner from that particular jail because of some previous happenings before this particular incident resulted.

The local police were investigating the matter after this particular incident, and the moving of those inmates to another facility, whether it be to Millbrook Correctional Centre or what have you, would have complicated their investigation. Secondly, the inmates had to appear in the Lindsay court and I think any suggestion of moving inmates might have had some demoralizing effect on our jail staff for a number of reasons. Possibly staff would think that the ministry lacked confidence in their competence to handle difficult inmates.

I have said earlier that we expect our staff to act in a responsible manner at all times, to be nonjudgemental. They have no right to be meting out punishment. They are to be impar-

tial even though some of the people there have committed some very serious and repugnant crimes. Furthermore, the other reason would be that the ministry questioned the staff's professionalism and their ability to remain neutral and nonjudgemental, to restrain their anger over those injuries to their colleagues.

If we were going to move inmates from our institutions to other institutions every time some type of an incident occurred—and as I say we are not dealing with necessarily nice people; they are people who have come into conflict with the law, have been sentenced to our care, and are in the institutions for having committed some type of crime. So we are not running Sunday schools. These are not nice guys.

Mr. Eakins: This was not just some incident.

Hon. Mr. Leluk: No, but what I am saying to you is that we have numerous incidents occurring in institutional facilities across this province.

If there are people there who are expected to act in a professional manner, to be nonjudgemental at all times in dealing with inmates, what confidence would this ministry have if we transferred people out every time some type of incident occurred? I have stated the reasons.

John Duggan is here. If you want to elaborate on some of the things I have said, John, I would appreciate your comments.

Mr. Duggan: It is not a policy of the ministry to move people out. We examine each situation quite closely.

There were factors pertaining to the ongoing investigation at that institution that necessitated their staying at that institution. We might have moved them at a later date, but I would not like to say whether we would have done that or not. We do not have a policy of moving people out just because they committed an incident or made an assault on staff.

The morale of our staff is a very important factor to consider. They have to run an institution 365 days a year, day in and day out, and they are very proud of the way they run them. The minister is speaking of that professional attitude. If we had moved those inmates out of that institution, staff morale would well have taken a knock.

Mr. Eakins: It bothers me somewhat that your ministry is quick to accept the credit for all the good things you are doing, but none of the blame.

Let me ask you this. You say you cannot move people just because incidents happen. Surely

you do not call this just another incident. This is a case of those birds coming in there, and it says right in the grievance board committee's general outline of events that it was known what type of people they were. They knocked the guard unconscious in April. They did it again in May, yet you say we cannot move them because of this.

Let me ask you this. Did Inspector Leutz go to Lindsay on the Monday, the twenty-fourth or twenty-fifth? I just cannot remember the exact day. He went back to Toronto, and I understand it was his recommendation to your ministry under oath that they be moved immediately. They were not moved immediately. Is this true? Why did you not accept Inspector Leutz's testimony?

Hon. Mr. Leluk: I would have to ask Mr. Duggan to answer that, or would someone on the staff have that information?

Mr. Duggan: Could I call Mr. Benedict who has handled this case for us?

Mr. Eakins: I think it is a serious matter. It is my understanding that under oath Inspector Leutz recommended to your ministry that these two prisoners be removed immediately. Why were they not? Why did you not follow the advice of your own inspector? If I am wrong, I am subject to correction.

Mr. Swart: While we have a moment, Mr. Chairman, are we on vote 1602, item 1?

Mr. Chairman: Item 2, Mr. Swart.

Mr. Duggan: Mr. Chairman, I frankly cannot say whether he said that or not. I can tell you there was discussion as to whether to move those inmates or not. There was a discussion among the superintendent, the regional director and myself. I just could not tell you whether Mr. Leutz made that statement on oath. I will find out.

Mr. Eakins: Then I will leave that, but I would ask the ministry if they would reply to me on that particular question on whether Inspector Leutz testified at the hearings and at the Ontario Provincial Police hearing and whether he testified under oath that he recommended to the ministry that these prisoners be removed. If he did and you did not, then I think you have to accept responsibility on that.

This is a very serious matter. Nine guards faced criminal charges. Sergeant McGinn was discharged at the early part of the preliminary hearing. He was not committed to trial. He was one of the people who lost his job eventually. After some 50 witnesses were heard, eight

guards were found not guilty by a judge and jury in the court. This was after a 13-day trial. The judge concurred with the jury that there had been no assault.

I would like to ask you what the difference is between assault and excessive force.

Hon. Mr. Leluk: There is a difference, Mr. Eakins. First, I would like to correct you for the record. We do not refer to our staff as guards. They are referred to as correctional officers. These are professional people; they are not just there to guard over someone.

Mr. Eakins: I could not agree with you more.

Hon. Mr. Leluk: That is the first thing I would like to correct. Secondly, there is a difference. It is true there were eight charges laid by the Ontario Provincial Police against eight of our staff at the Lindsay jail for assault causing bodily harm. This was a separate investigation conducted by the OPP. Both arose out of the same incident but they were totally separate investigations.

We did not fire our staff for having assaulted the inmates causing bodily harm. There is a difference. The court case is a separate matter. The decision there is a judge's decision. It is quite separate and apart from the disciplinary procedures we take as a ministry. In our case, the ministry disciplined its employees for violating ministry rules, regulations and standards of conduct, not for committing the criminal offence of assault. I am just telling you what we do and that these are two separate matters.

Mr. Elston: The judge and jury must have felt the action of the people in the circumstances was a reasonable response. You are telling us you disagreed with the judge and jury because the response of the guards was not reasonable?

11:50 a.m.

Hon. Mr. Leluk: I am sorry, I did not get that.

Mr. Elston: One of the reasons the charge was dismissed was that the judge and jury must have felt the response of the officers was reasonable under the circumstances. What you are telling me is that the reasonable test applied by a judge and jury to the facts was not the same reasonableness you would require of your officers under the same set of circumstances and facts. Is that what I am led to believe?

Hon. Mr. Leluk: I would ask my deputy minister, Archie Campbell, to respond to that question.

Mr. Campbell: Perhaps I could point out two or three additional differences between the

criminal proceedings and the disciplinary proceedings. The first point is we cannot speculate as to what went on in the minds of the jury. Jury proceedings are by law secret and confidential. I suppose one could look at the charge to the jury and the addresses of counsel and speculate.

Mr. Elston: They are a peer group and they reflect the public interest. That is the whole process of the jury system.

Mr. Campbell: One cannot speculate too much as to exactly the precise reason why any particular jury came to a particular conclusion on the evidence. There is another very significant difference in that they were dealing with different matters in the criminal case. They were dealing with the charge under the Criminal Code, not excessive force under the regulations of the Ministry of Correctional Services.

The jury was approaching it from a different standard of proof. The standard of proof in a criminal case is, of course, proof beyond a reasonable doubt. The standard of proof in this kind of case, where the allegation is one of excessive force, is one of clear and convincing evidence. You do not have to commit a criminal offence before you can be disciplined for using excessive force under the regulations.

Another very significant difference is that the grievance board had certain evidence that was not admitted into that particular trial. That has to do with statements made by employees to their superior officers, and particularly to inspectors from the ministry. In the criminal trial, the judge, in the particular circumstances of that case and under the rules of criminal evidence as he understood them in that particular case, ruled that evidence inadmissible. However, that evidence was admitted and was considered by the grievance settlement board.

So (a) there is a real question of speculating as to what went on in the jury's mind and they cannot by law be asked what went on in their mind; (b) the question of criminal intent does not arise under a question of excessive force under the regulations at all. It does in a proceeding under the Criminal Code. The standard of proof is different and the evidence is different, so they are very different kinds of proceedings.

Mr. Elston: What you are saying to us then is that the reason for the dismissal was largely as a result of self-incrimination by statements made to superior officers?

Mr. Campbell: It depends on how you define self-incrimination. There were contradictions as I understand it—I was not present for the

evidence—between what was said to inspectors and what was said at various other times by the officers.

Mr. Elston: So there was contradictory material on which you based the decision to dismiss these officers then. Is that what you are telling us?

Mr. Campbell: Contradictory in what sense?

Mr. Elston: You mentioned there was contradictory material available as to what was said between various officers at various times and their superiors. When you replied to my other question, you placed your finger on the fact that there was more material available and admitted as evidence in the hearing process than there was at court.

Mr. Campbell: Yes.

Mr. Elston: Now you are going back to saying there was some contradictory material on which you based your decision. You are leaving yourself open to some very serious questions about whether or not you made the proper decision.

Hon. Mr. Leluk: We made the proper decision because that decision was upheld by two independent arbitration tribunals. Either you believe in the grievance process in this province or you do not. Based on the review of evidence by those two tribunals, they upheld the decision taken by us.

Mr. Eakins: None of them was there.

Hon. Mr. Leluk: I do not know whether you live in a democratic country or not. I do, and I know decisions are based on majority rule.

Mr. Eakins: We found that in this House.

Hon. Mr. Leluk: Let me just add to what Mr. Campbell has said. It is the position of this ministry—and I might say that it is a view supported by labour arbitrators in the various grievance decisions, both in the public and private sectors—that court proceedings and internal employment-related discipline are entirely separate issues even though they may stem from common incidents.

In the former the court must decide whether a Criminal Code offence has occurred, and in the latter the employer must determine whether an employee has violated the terms and conditions of his employment. There is that clear distinction.

Mr. Spensieri: I would like to follow up for a moment on this point.

The representatives of the correctional officers to whom the minister keeps referring as professional people, as well he should, seem to

be arguing of late for a standard of discipline which will be akin to the standard that police officers find under the Police Act. The approach there is that if there is any matter of internal disciplining the result is suspension with pay, and when the matter is disposed of in another tribunal, such as a court, pursuant to a criminal charge laid, then and only then are there further disciplinary actions taken at the internal level.

Would the minister not agree, now that we are moving towards a professional and qualified category of officers, that a standard procedure similar to that under the Police Act be adopted universally throughout the province for correctional officers? This would ensure that we do not find ourselves with these kinds of anomalies in the future, where the internal discipline is far greater and far more onerous than the standard, the discipline and the sanctions applied in a court context.

It seems to me that you are saying we should give this kind of protection. Is that envisaged?

Hon. Mr. Leluk: Mr. Spensieri, I would ask Mr. Campbell, my deputy, to address that question.

Mr. Campbell: We are satisfied now with the standards of performance and the standards that we apply to disciplinary proceedings. We see no reason, certainly at this time, why a criminal standard has to be applied to a matter of internal discipline. This would mean that we would virtually have to have somebody convicted in a criminal court with completely different standards of proof, having to do with completely different issues, before we could take disciplinary steps against a member of our staff.

We expect a very high standard from members of our staff. There are a number of things that may well not amount to criminal offences that simply cannot be tolerated within a correctional institution.

Mr. Spensieri: With respect, that is not the issue. What you are really saying is that protections which apply to police officers and other law enforcement personnel in this province are not to be used and applied towards correctional officers who work, I would submit, in equally demanding and onerous circumstances.

Mr. Campbell: Without an extensive review of the Police Act, which I do not have in front of me, I do not know what particular differences you are referring to.

Mr. Eakins: I note that one of these sergeants was dismissed, not because of using excessive

force, as he did not lay a finger on anyone, but for not properly completing some reporting to you. Is it common that if one of your officers does not complete the report as required, he will lose his job?

Mr. Campbell: Are you referring to Sergeant Whalen or Sergeant McGinn?

Mr. Eakins: That is right.

Mr. Campbell: I thought that the management decision did make a finding of excessive force with respect to both of them. There was also a reference to the failure to file appropriate reports. He—Sergeant McGinn—was also in a supervisory position over the individuals who were in the bargaining unit taking action at that time.

Mr. Eakins: What I am suggesting is that he lost his job because he did not complete the report properly. This is one of the things. Yet the superintendent of the jail did not properly appoint a replacement; during the height of all this confusion he took off to a convention in Ottawa. I believe that there has been some reference to this in the grievance board report, that he did not put it in writing, and yet you are firing one of these people for not putting other things in writing.

Mr. Campbell: The short answer is that Sergeant McGinn was found by the grievance settlement board to be the person in charge, that he was there, he was present, he was in charge of what was going on, and that he has to bear responsibility for it.

Mr. Eakins: What I am saying to you is that the correctional officers are condemned for not completing their reports properly, but that there has been no criticism whatsoever of your own staff.

12 noon

Mr. Campbell: Which staff?

Mr. Eakins: Your superintendent.

Mr. Campbell: He was not there at the time.

Mr. Eakins: There was nothing in writing as to who the acting superintendent would be. Do you have any comment on that?

Mr. Campbell: Sergeant McGinn was the senior officer in charge of the shift at that time.

Mr. Eakins: I think what I am trying to say is that you condemned the employees there for not advising you fully as to what happened and not filling in certain reports. They did not put it in writing, and yet your own superintendent did not put in writing who his replacement was to

be, as required, I believe, by your minister. Is this not correct?

Mr. Duggan: Sergeant McGinn was charged with using poor judgement in allowing a verbally abusive and threatening inmate, Gary Barnes, to leave his cell in order to brush his teeth. He was also charged with failing to report the use of excessive force by staff on May 27, 1981.

The grievance board report says: "I have now had the opportunity to review the report of that hearing and consider the evidence. I found that all of the allegations are substantiated. During the incident of May 27, 1981, three correctional officers under your direct supervision not only used excessive force towards inmate Barnes, but did so under your full observation. In fact, you saw fit to personally issue a baton to one of the officers involved, who then returned with that baton to the scuffle to participate."

Mr. Eakins: That is right, to save his life. We will come back to that in a moment.

I would like to ask you why were McGinn and Whalen tried together in these hearings? They are two different people and they were charged by your ministry on two different days, one on May 26 and the other May 27. Why did you lump them together? This would give the grievance board, in my mind, a feeling that there could very well have been a conspiracy when the two were together. Even the grievance board refers to this by saying, "It would perhaps be logical to assume that reprisals would occur if opportunities presented themselves."

Did you not assist in this feeling of the grievance board by having them tried together? Why would they not be tried separately?

Mr. Duggan: The answers to that are that their representatives agreed to their being tried together. There was some suggestion in our minds, and this has been upheld by the grievance board, that there was some suggestion of conspiracy. Therefore we felt there was a very valid reason to try them together.

Mr. Eakins: But they were two different people and there were two different offences.

Mr. Duggan: That was the decision we made based on that evidence.

Mr. Eakins: That is questionable, and that is why I wanted to ask you about that.

One other point, Mr. Minister. Why are there no court records kept of grievance board hearings? The Workmen's Compensation Board has total transcripts.

Mr. Philip: You have just now been made the Minister of Labour.

Hon. Mr. Leluk: I was just going to say that this is not a matter that comes under this ministry's jurisdiction.

Mr. Eakins: We will go on to another matter here. I want to ask you about the use of force and about the sticks that were carried by the officers.

Sergeant Taylor, I believe, placed in the book the rule that they were to carry these sticks at all times when the inmates were out of their cells. However, the officers are criticized for carrying the sticks by the grievance board, which says that they should not have had them in close combat. Apparently they were discharged for using excessive force, and yet they were told to use these sticks.

Were they properly prepared to use them? I have spoken to other correctional officers who tell me they really never had any training. It bothers me, Mr. Minister, that you say one of the officers acted unprofessionally. My gosh, he was only serving a few shifts. Had he had any training? It was my understanding he was told to use one of these sticks, but he had never had any training. How can you call him unprofessional?

Mr. MacQuarrie: Mr. Chairman, on a point of order: It seems that—

Hon. Mr. Leluk: You are retrying these cases in this committee. That is exactly what you are doing. You are trying to retry these cases right here before this committee when they have already been decided upon.

Mr. Chairman: Mr. MacQuarrie has the floor.

Mr. MacQuarrie: We are going into matters affecting individual correctional officers in a certain given set of circumstances that apparently existed and prevailed at the Lindsay detention centre or jail. I do not mean to suggest for a moment that Mr. Eakins should not get full and frank disclosure of the information he wants, but my point of order, Mr. Chairman, is whether this information should be obtained here or whether it is more appropriate to question period or to something else. We are dealing with estimates.

Mr. Chairman: Mr. MacQuarrie, I would rule this is the appropriate place, under vote 1602, item 2, to discuss the care, treatment and training of inmates. However, it should be restricted more to the financial aspects of it. This is the spot in the estimates where this subject should be brought up, but we are dealing with an estimated budget rather than grievance

procedures. Therefore, I would say yes and no. Yes, it is the correct place, but it should be restricted more to the financial aspects.

Interjection.

Mr. Chairman: Mr. Mitchell, is this on this question?

Mr. Mitchell: Yes, it is on the point of order and supplementary too, Mr. Chairman. I do not wish to challenge the chair. However, from the information brought forward by Mr. Eakins and other members here, there was a hearing held by two different bodies. The disciplinary measures carried out were upheld by both.

Quite frankly, I feel that is exactly what we are doing here now in this particular situation. I do not deny Mr. Eakins the right to have the answers to his concerns, but I am somewhat concerned—and I would have to bow to you, Mr. Chairman, being a member of the legal profession—that we are correct in what we are doing. I have a feeling we are not correct in dealing with it in this fashion at this committee.

Mr. Swart: Strictly on the point of order, I want to say the pattern has been set. The tradition is there that under the appropriate vote there is wide latitude in the discussion of issues. In the estimates in which I have sat, there has been no restriction on the discussion on issues, whether it related to finances or not.

I may agree or disagree with some of the comments which have been made under a particular vote, and perhaps I would not argue whether this is under the appropriate place in the vote, although I think it is. I would argue strenuously that any member of this committee, as long as it is in the appropriate place, can discuss any issue whether it is related directly to the finances or not.

Mr. Brandt: On the same point of order, I see nothing inappropriate about a discussion with respect to equipment or the training of guards and that sort of thing, but I do think there is something completely out of order in rehearing these cases, as the minister has suggested, and also in discussing specifics as they relate to the names of the people who were involved.

I see nothing wrong with the member discussing the general concepts of the approach to how things are handled, but I do think there is something totally inappropriate about doing it when you mention the names of the people who were involved in cases that have already been dealt with in an appropriate fashion according to the rules of this province.

12:10 p.m.

Mr. Elston: Except in so far as it tends to reflect the training given to these people and the way they have been dealt with in the course of the administration of this whole program.

Mr. Chairman: I am going to rule that it is in order, subject always to being challenged by the committee. It is in order, but I would ask Mr. Eakins to try to restrict himself to matters with some financial connection to the care, treatment and training. I have to slightly disagree with Mr. Swart. We are here with regard to finances. We cannot come in here and say we can bring up anything that has no connection whatsoever with finances and spend the entire estimates without mentioning one dollar.

Mr. Philip: There is nothing in the ministry not connected with finances, so that virtually opens up everything.

Mr. Eakins: Mr. Chairman, I have just a couple of questions left. All of the questions I have been asking here certainly refer to the administration of this ministry. In relationship to the Lindsay jail, I think it is a fair question to ask why those people were not moved.

It is a fair question to ask about the administration of the jail. I would like to ask the minister to tell me what training the correctional officers at Lindsay Jail have had in regard to the use of the sticks—or whatever you call them—they were told to use. How much training have they had? How much money has your ministry spent on the training of correctional officers in this regard?

Hon. Mr. Leluk: Mr. Eakins, I would ask Mr. Duggan to respond to that question.

Mr. Duggan: The short answer to the question of the training of the staff at Lindsay Jail with the batons was they had not received any training. Having said that, we expect our staff to exercise good judgement and common sense. Some of the attributes we look for in our hirings are those two characteristics. You asked about what training we have given staff in the ministry on this baton. In the last two years, we have trained 28 five-man ICIT teams. ICIT stands for institutional crisis and intervention training.

Those 28 teams are distributed across the province. Every one of those teams has been trained in the use of the baton and other defensive techniques. They are meant to deal as a last resort with violence or implied violence that we feel would prove a severe threat to security or is liable to prove a severe threat to security. Those teams have been trained in the use of the baton.

I would stress that my understanding of the grievances, and I have read them both very carefully, is that the grievance board did point out that the staff had not been trained in the use of the baton. I also understand they did not indicate in any way that the lack of training with the baton caused those inmates to be beaten. One person—I shall not name him—left the area where a fracas was going on, went a number of steps to the grill, took a baton from another member of staff and returned to beat the inmate with that baton.

Mr. Eakins: To beat or to defend themselves?

Mr. Duggan: Our impression and our understanding is that he beat him. That was the use of excessive force subsequently upheld by both of the grievance settlement boards.

Mr. Eakins: I will not pursue that, but it certainly bothers me that you have two people on the floor badly beaten and kicked into unconsciousness and then you say they are using excessive force in defending themselves.

I just want to make one other comment. It bothers me that one of the sergeants had 21 or 22 years without a mark on the record, and because of this incident, for not filling in the proper forms or putting all the detail in, he should lose his job. That bothers me. I am going to ask you one further question because I am not going to prolong this. I just feel they have been unfairly dealt with. I am going to ask you, Mr. Minister, what does the name John Blackmore mean to you? I have to use that name.

Hon. Mr. Leluk: I have to say I am not familiar with that name at all.

Mr. Eakins: John Blackmore was one of the people who was kicked into unconsciousness. He will never work for the ministry again. He has been before the Workmen's Compensation Board and they have advised him that because of his injuries he cannot go back into that work again. I will tell you what bothers me. It is that not one of your Queen's Park staff has ever been in touch with John Blackmore to try to offer him assistance on another job or to reflect any feeling as to what that man went through. I talked to him just the other day to assure myself of this. Other than a courtesy letter from the superintendent of Lindsay Jail, that is the only connection he told me he had with your ministry. I think that is pretty hard-hearted.

Mr. Duggan: Can I respond to one specific point? I visited Sergeant Blackmore and the other people at the Ross Memorial Hospital in Lindsay three days after the incident occurred.

Mr. Eakins: Has anyone tried to work with him since that time? That was a year ago. He is still off; he is not going back with the ministry.

Mr. Duggan: I am just responding to the fact that you said no one had visited him. In fact, I visited the hospital and spoke to Sergeant Blackmore at some length.

Mr. Eakins: I am thinking about rehabilitation. Since that time no one has been in touch with him to try and assist this man.

That is all I have.

Mr. Swart: For clarification, in the exchange, I understood you to say these particular jail guards had had no training. I presume you mean in combat.

Mr. Duggan: Yes.

Mr. Swart: I know you have the special unit, but what percentage of the guards in the jails have training in combat? Are there any guards in the province who have not yet had the general training courses in any of the institutions?

Mr. Duggan: Yes. It is a good question.

Our staff receive some training in defensive measures. This is done in the prescribed training manuals. For example, we train staff in the use of tear gas, which is another means of putting down any disturbance or severe threat to security. The institutional crisis intervention teams have been trained in the last two years, and we are now developing a baton training program which will be twofold. It will be covered in the initial residential training of correctional officers and in one of the slide-and-sound presentations we showed you yesterday.

I would stress that the baton and other similar instruments are seen as defensive weapons. They have a deterrent aspect. One of the major components of the training for ICIT teams is their deterrent value. An organized show of potential force has a great deterrent effect on an inmate population.

Mr. Swart: I presume these special teams are in areas where you get in a lot of the prisoners. When there is a potential riot or something, then they are called in from whatever area necessary.

Mr. Duggan: Yes.

Mr. Swart: I was concerned about the amount of training the local guards had with the batons and in other areas. I gather from that and from what you have said that the defensive training is perhaps rather minimal for the average guard.

Mr. Duggan: I would not describe it as minimal. It does occupy a position in the basic

training course. It has tended to concentrate on such things as tear gas, but we have included it now in the staff training program.

You are quite right. An ICIT team can be called together at any time when we do have large gatherings of inmates in any one of our larger institutions.

Mr. Swart: On a point of order, Mr. Chairman: I hope we might have time to go on to the parole matter. There are a couple of questions I would like to ask on that.

Mr. Chairman: Mr. MacQuarrie and Mr. Spensieri have indicated they would like to speak on item 2, Mr. Spensieri for a reasonable length of time. Then I have no indication after that.

Mr. MacQuarrie: I shall be quite brief. Although I raised the point of order with respect to Mr. Eakins' question, I have considerable sympathy for the case that he was making on behalf of the correctional officers involved.

My question is a more general question. At the Lindsay jail there were three hard cases, trouble from the day they came in. They allegedly assaulted correctional officers to an extent requiring hospitalization and apparently caused quite extensive bodily harm. Apart from the criminal charges that could flow from these assaults, what sort of discipline or punishment does the institution, acting in accordance with the standards of performance or conduct, mete out to these prisoners?

12:20 p.m.

Hon. Mr. Leluk: Mr. MacQuarrie, as I mentioned earlier in my remarks, it is not our job in this ministry to mete out punishment. That is done by the court system. The judiciary decides on what punishment the people that come before them are going to have, and they are sentenced to our care.

We expect our staff to act in a professional manner at all times, to be impartial regardless of how repugnant some of these crimes might be that some of these people commit. Our staff does not have the right to take the law into their own hands and mete out punishment. Is that what you are saying to me?

Mr. MacQuarrie: No, I am not suggesting that they take the law into their own hands and mete out punishment.

What other forms of discipline are there in the institution, apart from the criminal law process—laying a charge of assault causing bodily harm—to handle these types of inmate? Do you put them in solitary for 30 days?

Hon. Mr. Leluk: Segregation, yes. They could be moved into segregation. You mentioned that further charges can be laid by those guards who have been assaulted.

Mr. MacQuarrie: That is the criminal law.

Hon. Mr. Leluk: These things were done in this particular case.

Mr. MacQuarrie: I was wondering what sort of discipline there was. Can you deny them access to television or the other goodies that the inmates have?

Hon. Mr. Leluk: I would ask Mr. Duggan to respond to this.

Mr. Campbell: Just before Mr. Duggan does, can I just point out that if a criminal charge is pending against an inmate, we do not impose an institutional punishment on him. For instance, these inmates in this case—

Hon. Mr. Leluk: They were federal parolees.

Mr. Campbell: —were federal parolees. I think they got something in the range of five years' imprisonment.

If somebody is going to get a sentence of imprisonment from a criminal court for committing an offence in an institution, then we cannot impose an institutional punishment on top of that, such as withdrawal of privilege. Difficult inmates can be kept in administrative segregation.

We have a number of other administrative results of misconduct that Mr. Duggan can expand upon. However, once a criminal charge is laid against an inmate for something he has allegedly committed inside the institution, we cannot impose an institutional punishment on him, although we can very well keep him in segregation to control him, pending the result of the criminal case. These individuals got five years' imprisonment.

There was an incident at Millbrook Correctional Centre not too long ago where there was an attack on a guard. The individual was charged with attempted murder and was sentenced to life imprisonment by the criminal court. If the criminal court is going to take action with respect to somebody, we can keep that person in administrative segregation although we cannot impose an institutional punishment.

Mr. MacQuarrie: Suppose the authorities were ostensibly aware that these were hard nuts. I gather that there was an element of misbehaviour before the actual assaults. What sort of punishment or internal discipline could be handed out to them, and was it in fact handed out?

Mr. Duggan: Can I just make the point, Mr. Chairman, that our jails and detention centres are meant to house hard nuts. There is nowhere else for them to go. That is the place they are going to end up. That goes with the territory.

The misconducts are fairly extensive. As to the powers the superintendent has, as Mr. Campbell has mentioned, he can place someone in segregation during an investigation into an alleged misconduct. If, after a hearing into a misconduct, he determines that the inmate is guilty, he can place him in segregation for specific periods of time and on a special diet if he wishes to do so.

An inmate who is on remand, therefore, fails to earn the remission the superintendent can award a sentenced inmate. For anyone who is not sentenced, of course, he does not have that power. He has other powers: the use of segregation, the removal of privileges, the things you mentioned. He can take away the television; he can remove privileges, such as smoking, that an inmate may be privy to in that institution. So his powers are quite far-reaching, above and beyond the powers of taking a person to court. We tend to prosecute the more serious offences.

Mr. Campbell: Just to expand on that, if it is a misconduct, the superintendent can impose loss of all or some privileges for a period not greater than 120 days, change of program or work activity, change of classification relating to incentive allowance, change in security status, a reprimand or revocation of a temporary absence permit.

If the superintendent determines that an inmate has committed a misconduct of a serious nature, the superintendent may impose, in addition to any of those, one of the following penalties: close confinement for a definite period not greater than 30 days on a regular diet; close confinement for an indefinite period not greater than 30 days on a regular diet; close confinement for an indefinite period not greater than 10 days on a special diet that fulfils basic nutritional requirements; forfeiture of a portion of all of the remission that stands to the inmate's credit, but no such forfeiture shall exceed 15 days without the minister's approval, or subject to ministerial approval, suspension of eligibility to earn remissions. So there is a wide range.

Mr. MacQuarrie: As a second aspect to my question, was anything done in respect of these three inmates?

Mr. Duggan: At the time of the incident, two of them were being housed in one corridor on

their own. They had been segregated from the normal population because of their threat.

Mr. Eakins: As a supplementary, Mr. MacQuarrie has asked if something was done. When were these two prisoners moved to Millbrook Correctional Centre from Lindsay? Was it immediately after the third event?

Mr. Duggan: Which one do you mean by the third event, Mr. Eakins? Do you mean the third event the staff were charged with?

Mr. Eakins: When were they moved?

Mr. Duggan: I cannot recall the date exactly, but I have an idea it was two or three days afterwards.

Mr. Eakins: I think that ties in with Mr. MacQuarrie's question of what steps were taken. I think that ties in with an earlier question of mine as to why a disturbance like this could not have happened earlier and prevented that third occasion from happening.

Mr. Duggan: May 29 was the date they were moved. Could I just make the point, Mr. Eakins, that we have a different set of circumstances operating here? We have now an allegation of staff having attacked inmates. That is a different set of circumstances from the inmates having attacked the staff. In those circumstances, we deemed it right and proper to move them.

Mr. Spensieri: This item is really the essence of these estimates in as much as it is asking us to approve \$138 million out of the \$184 million. I have a reasonable number of questions and comments which may require some answers. In the interest of time, I will be content if the minister and the deputy minister will take some of these points and questions as notice and will reply at another time they consider appropriate.

Essentially, the increases in the estimates from the previous year and this year have been kept at well below the level of inflation, which the ministry assumes at 10 per cent. That would indicate support for my contention that services are in fact declining.

One item that struck me as being rather awkward was the item of supplies and equipment, which is now the subject of a 40 per cent increase over previous years' estimates. I assume this is connected with the installation of expensive closed-circuit camera equipment, expensive computer equipment in the various detention centres. We want to ask the minister in these times of restraints, in these times of desire not to engage in capital costs, whether these innovations, of dubious value I might add, are

really in the best interest of delivering more effective service?

The other point I wanted to make was that the bulk of this \$138 million is really salaries and wages and employee benefits. While these are essential, they are not necessarily in the area of service delivery.

12:30 p.m.

As another specific point, I have noticed an increase in the category of industrial officers. We now have 47 of these. These were not in existence in 1981. I am just wondering if the minister or the deputy could reply as to the cost effectiveness and the cost/benefit analysis of this rather large increase in staff.

Picking up further on a point made by Mr. Breaugh last year, we note a decline in kitchen staff from 98 to 79. We are wondering whether there has been a decrease in the services provided, or whether there has been some shift away from institutional food preparation and contracting out of this function.

We also note the total staff has, in effect, declined considerably since 1981 from 33,831 in 1981 to 33,893. It is not a decline, but it is not an increase proportional to the general increase in the jail population which hovers around 13 or 14 per cent.

The other item I wanted to refer to was the chart with respect to adult institutions and jails. The chart is very misleading, it seems to me.

Hon. Mr. Leluk: What page are you quoting from?

Mr. Spensieri: Page 47. It ought to include a cyclical or peak-period exceeding of capacity. The figures as they are given to us are rather innocuous. They would seem to indicate, for instance, that in the Toronto Jail there is a capacity of 409 and an average daily count of 435. What is misleading about this is that the exceeding of the capacity taken over an annual basis seems rather insignificant when viewed this way. However, there have been instances in the Toronto Jail where, from a capacity of 409, there have been as many as 750 or 800 inmates.

The ministry really ought to be considering introducing peak period analysis of overcrowding. We note that even by these innocuous and almost fixed figures, there is still evidence of overcrowding in all of the institutions I just cited: Toronto Jail, 409, with an average daily count of 435; Hamilton-Wentworth, 270, with an average daily count of 297; Metro West, 380, with an average count of 401, et cetera. There is a much more telling indictment that can be

made of this overcrowding than is shown by this chart, and that is quite misleading.

The other question dealing with specific detention centres—I guess no one likes to use the word jail any more, Mr. MacQuarrie. In Mimico there is mention of a new fence currently being erected. In a brief prepared for our caucus by people in the institution, there is a concern that this new fence is being erected solely around the dormitory area and will not have any positive effect towards increasing security at the Mimico Correctional Centre.

Perhaps the ministry staff could advise us on this. If the fence is being relied upon to justify a jump of some 150 to 200 inmates in the capacity of Mimico, then we would submit the current fence construction project, limited to the dormitory area, will have nothing to offer by way of additional security. Inmates will have to be released from the dormitory area on a daily basis and the creation of this so-called extra security is not going to improve things in any way.

We note, as well, the trendy and fad use of computer systems and computer equipment throughout the various other detention centres, Hamilton-Wentworth, Metro Toronto, et cetera, as if this is going to be the solution to the persistent overcrowding. We really question the wisdom of these kinds of expenditures.

With the Whitby Jail situation, it seems to me that the minister is, by the introduction of double-bunking on an permanent institutional basis, really overstretching the correctional capacity as well as the mandate of his ministry, because it is very easy, as we have seen even in the residential analogy, to create all kinds of units by permitting duplexing, as some of our municipalities like to call it.

It seems to me that while that may be a desirable solution in the residential factor, you do not improve your capacities by institutionalizing double-bunking and triple-bunking in facilities which were not designed for that. We are mindful of the minister's earlier comment about the built-in expendability of some of these institutions, but it appears that the route to go is not the blessing and the sanctioning of double-bunking on a permanent basis in institutions that are not intended for it.

I really would like to just touch briefly upon this whole question of the training of the correctional officers. I must say I was not at all convinced by the slide presentation yesterday. I think there is an obvious lack in the training. If I could just cite once again from the brief pre-

pared for our caucus by people who work in the institution, I would like to put this on record because Mr. Duggan is here and I think it concerns his administration.

The brief basically states to us that the director of institutions, Mr. John Duggan, and his minister are forcing the staff, which he calls its most valuable resource, to work in an undertrained situation.

Hon. Mr. Leluk: Mr. Chairman, we have not seen a copy of that brief. Has anyone got an extra copy?

Mr. Spensieri: I will make it available. I am only referring to it in a very cursory way.

Basically, the brief belies the allegations of training. The brief says that at present—and the minister and his staff can deny this—a new correctional officer, someone straight off the street, does not undergo any formalized training for at least two to three months. Then it is only a two-week crash course, followed by a one-week follow-up after one year of service.

In the Andre Hirsh escape situation the correctional officers were of a CO-1 classification, which is a part-time classification. Perhaps the minister ought to look at this time as to whether or not the continuation of part-time correctional officers is a desirable policy for his ministry to adopt. Certainly the representatives feel that it is a classification that ought to be totally discontinued, that the training is insufficient. My information is that there is a very unsatisfactory syllabus, although much was made yesterday of the training manual.

I would draw the minister's attention to the fact that federal correctional officers receive a 13-week training period from day one of service and are not put in a sink-or-swim situation as our correctional officers are. There is a demand which is making itself manifest for a training academy, for a central school, much as is being offered to police officers. Perhaps the minister might wish to comment on the desirability of establishing such an academy relatively soon.

One site which has been suggested is the old Don Jail, which I understand is now being used by the emergency task force for its training. Perhaps the minister would like to comment on whether that particular facility could become a correctional officers' academy if we are truthful in our avowed aim of creating a professional class of officers.

The other question I have is with this entire concept, which was alluded to by Mr. Campbell, of using remission as a means of prisoner control. Many jurists and lawyers working in the

field of corrections have indicated the whole concept of remission is no longer a desirable form of inmate control. The ministry now has available in its arsenal a much larger number of inmate control mechanisms. The whole concept of remission, which I understand was introduced by the Quakers, may no longer have any application in the present-day detention setting.

12:40 p.m.

I would be interested in seeing what the minister's policy will be towards this very important form of, up to now, inmate control. The argument is that remission, and especially the removal of earned remission time, operates as an extreme kind of sanction. The ministry has available to it many other forms of inmate control, such as indicating to a prisoner he will not be able to participate in certain programs, removing certain opportunities, such as participating in community resource settings, and denying the inmate access to certain social and educational opportunities within the detention system. Perhaps the minister could comment on that.

Hon. Mr. Leluk: Mr. Chairman, in view of the time and the extensive number of questions Mr. Spensieri has posed, I am just wondering how we might handle that, whether it would be best to take those as notice.

Mr. Spensieri: As I said at the outset, I realize there are a number of points raised here. If you wish to respond to some of them, now that your staff is present, fine. If you simply wish to take them as notice—

Mr. Chairman: We have until six minutes after one o'clock and Mr. Swart does wish to refer to the parole.

Mr. Philip: Unfortunately, Mr. Swart had some duties to perform. He will be back in about 15 seconds.

Mr. Chairman: We are not at the parole section. That is vote 1602 anyway. Mr. Spensieri, to get through these estimates, if the minister attempts to answer that, no one else is going to have much opportunity. Could you reply in writing to Mr. Spensieri? He has indicated that is satisfactory.

Hon. Mr. Leluk: Yes, we could do that. We could take these questions as notice and get back to him. But Mr. Algar is here. Would you

possibly like to respond to the financial questions raised, Mr. Algar?

Mr. Chairman: In five minutes or less?

Mr. Algar: In two minutes, sir.

Mr. Chairman: Two minutes, thank you.

Hon. Mr. Leluk: We are very co-operative, Mr. Chairman.

Mr. Algar: The member asked the question about the increase in the supplies and equipment. I would remind you this committee also voted a \$4 million supplementary estimate. A large portion of that was put into last year's actual expenditures in that category. We did actually spend \$15.4 million. We are asking for \$17.8 million this year.

Mr. Spensieri: I am sorry, Mr. Algar, I do not quite follow that. If I could just go back to that item, last year's estimates were \$12,869,000. This year's estimate is \$17 million. We figure there was an increase of roughly 40 per cent in the allocation to services, regardless of sources or timing of the allocation.

Mr. Algar: Yes, but that was because we came asking for \$4 million extra at the time of the last estimates. A large portion of that was put into that particular piece.

Mr. Spensieri: Is there a major piece of equipment or service?

Mr. Algar: No. There was an increase in food costs and in utilities. That was the major reason. There was also a much higher volume of food consumed because of the high volume of inmates.

Mr. Spensieri: Under equipment?

Mr. Algar: Supplies and equipment, sir. The supplies are the food and the utilities and so on. The actual expenditure was \$15.4 million.

Mr. Chairman: Perhaps the minister could take notice of the remainder of those questions.

Mr. Mitchell: May I follow on item 2, with respect to one question Mr. Eakins raised that does bother me? In light of the concerns raised about a certain individual and the fact he has not been able to be relocated, would the minister give us the undertaking to attempt that?

Hon. Mr. Leluk: Mr. Mitchell, on that very point, I was just waiting for Mr. Spensieri to finish and I know Mr. Swart wanted to raise some questions about parole. I was going to mention we will have someone from our staff visit Mr. Blackmore to discuss his benefits and future employment status and help him with any other matters.

Mr. Eakins: I appreciate that.

Hon. Mr. Leluk: While I am on that, I would like to make one other statement. As the minister, I do not take any specific pleasure in having to have staff fired. I have been supportive of my staff and will continue to be supportive of my staff, but as I pointed out here this morning, there are certain actions on the part of staff that this minister and this ministry will not tolerate. Excessive force in the line of duty happens to be one of those. As I say, it is both unfortunate and regrettable when incidents of this type take place and that the ministry has to act in a disciplinary manner with staff members. That is all I want to say on that point.

Mr. Chairman: Are there any other comments with regard to items 2, 3 or 4 of vote 1602?

Mr. Swart: I would like to follow up on the point made by Mr. Mitchell.

Items 2 to 4, inclusive, agreed to.

Vote 1602 agreed to.

On vote 1603, community program; item 1, program administration:

Mr. Chairman: Is there anyone wishing to address that item?

Mr. MacQuarrie: I do not know whether this is the appropriate item under which to raise it, but yesterday, dealing with services to natives, one large reservation that did not come up in the discussion at all—

Mr. Chairman: Would that not be under items 4 or 5?

Mr. MacQuarrie: I see the Ontario Native Council and Justice is a transfer payment under this program administration.

Mr. Chairman: Carry on then.

Mr. MacQuarrie: It was the Cornwall Island reserve and I was wondering what activity, if any, was taking place in that area.

Mr. Daniels: The Cornwallis reserve is served by the probation officer in Cornwall. There are no native officers there, but they would work on the Cornwallis reserve with the client group there.

Mr. MacQuarrie: I realize it is a difficult reserve, being partly in the United States, partly in Quebec and partly in Ontario.

Mr. Daniels: Interestingly enough though, the offender profile from the native offenders in eastern Ontario is quite low. We had a native officer in Peterborough for Hiawatha, Roseneath and Curve Lake, but surprisingly, towards Kingston, Shannonville and Cornwallis, the amount

of the native offender client group is quite small and does not require a full time officer.

Mr. MacQuarrie: They just close bridges.

Mr. Spensieri: Following up on our concerns about the proliferation of these private contracts, the ministry does state it expects over 200 private contracts. Of the contracts awarded, how many have been cancelled or rescinded by the ministry for failure to perform within the historical period from the date of inception to the present?

Hon. Mr. Leluk: Mr. Spensieri, I would ask Mr. Daniels to respond to that.

Mr. Daniels: Our record, in terms of performance by these agencies, is very good. The numbers that have been terminated are minimal, but they have been terminated or reduced. An example would be the contract in Halton-Peel with the Elizabeth Fry Society for community service orders. The numbers of clients anticipated, the clients that were referred by the court system, were not met so the worker was relocated to Peel where the volume of clients was a lot higher.

Mr. Spensier: What number were cancelled for breach, for failing to perform?

Mr. Daniels: Only one facility was actually closed. A community resource centre in Ottawa had an absolutely poor performance. It was not meeting the needs of the clients nor the community. It was completely shut down and the contract withdrawn. Most of the contracts are adjusted for volume and quality but not for disciplinary or reasons of misappropriation or misuse.

12:50 p.m.

Mr. Campbell: If we do perceive difficulties with the particular community resource centre or contract agency, we will speak to the people running it and occasionally they will make some very major changes. We can often achieve that without cancelling the contract. We have a number where the management of the resource centres have changed completely because of our concerns about the operation of the centres.

Mr. Daniels: Even the one in Ottawa was given three chances. We gave them a warning, another warning and then we put them on a probation period. We gave them lots of chances to improve their performance.

Mr. Spensieri: It seems there is either a very high degree of dedication or there may be political or social pressures for certain programs not to be cancelled. I do not envisage nor

can I really see in any other context of the contractual performance where there would be such a low failure rate—one out of 200. So to some extent, my original point about the degree of accountability and the degree of supervision of these programs seems to be supported by this low cancellation rate. I cannot really conceive of a program in any other field of endeavour where only one out of 200 would result in cancellation.

Hon. Mr. Leluk: I think the reason we have a low cancellation rate, Mr. Spensieri, is that we sit on top of these private agencies. As I mentioned in my remarks during these estimates, we do have some controls. You tell us there are not enough and Mr. Renwick, who is the critic for the New Democratic Party, says there are too many bureaucratic controls. I think that might be one of the reasons we do have such a low cancellation rate. We do sit on top of these. I did not want to take away from Mr. Daniels' statement.

Mr. Daniels: You have to understand these are operated by pretty good citizens' groups with boards of directors who also control the development and the quality of service. They are boards of directors of 15 to 20 individual citizens and volunteers who care about what their agencies perform. They include the John Howard Society of Ontario, Elizabeth Fry Society, the Salvation Army, the United Church of Canada and the Catholic church; we are not talking about fly-by-night organizations. We are talking about organizations with long roots in the community and with a long history in the community.

Mr. Chairman: Are there any other comments with regard to item 1?

Item 1 agreed to.

On item 2, probation and parole services:

Mr. Swart: Mr. Chairman, I want to deal briefly with this parole matter. Because we only have a few minutes left, perhaps I can put three or four questions into one and have the minister comment on them. In the address you made to us at the beginning, you talked a bit about the parole but you did not mention what appears to be a very obvious problem as shown in your report of the minister for 1981.

I specifically refer to page 23 and the fact that the number where parole was granted is down substantially from 1980. On page 22 the reasons are given for its being down; there are a combination of reasons. The major reasons are

a very real concern to me and I am sure to this committee.

The number of cases heard had a gradual increase. Although those numbers went up from 6,207 to 6,598 from 1980 to 1981, the actual number of paroles granted went down from 2,313 to 1,920. Now it would seem to me that if the same pattern had continued as in previous years, we would probably have talked about 2,500 on parole instead of 1,920.

What bothers me about this is on page 22 where you talk about the reasons for this. You say: "Among the reasons were increased inmate count at some institutions with resulting work pressures on staff. The parole board was just not able to obtain all of the information required for decision-making and could therefore not proceed with some cases within the normal time frame." You go on to say: "Other factors which the board encountered include overcrowding institutions, which led to a greater rate of transfer of prisoners throughout the system and therefore to difficulty in scheduling cases for hearing."

Then you also talk about the number of returnees. First, I would like to know if the number of returnees was a major factor. The other two factors seem to be counter-productive. If there were 300, 400 or 500 inmates who could have and should have gone on probation, then they are filling spaces where there is already overcrowding.

The annual report goes on to talk about new criteria for selection of the board members. I believe in the last year there were some changes made from one board for the province to five regional boards, which seemed to make sense. In this whole program, there has been some breakdown due to understaffing or something of this nature. This surely is the responsibility of the ministry.

If there were 400 or 500 people who should have and did not receive probation, I suggest that is a pretty serious matter. Therefore, I would like to have the minister's comments on whether that was the case or whether it was not the case, and that this situation is now rectified or is going to be rectified shortly so that those who should be on probation are on probation. They should not be cluttering up the jails. We should not be keeping persons in jails who should not be there.

Hon. Mr. Leluk: The chairman of the Ontario Board of Parole, Donna Clark, is not here today. She is out of the city. I would ask Mr. Campbell to address those questions.

Mr. Campbell: The chairman is on telephone standby. I believe she is at hearings in Guelph today. In the time available I doubt if we would be able to get her.

Mr. Swart: We have three minutes.

Mr. Campbell: I would observe the number of cases heard has gone up, although, as you quite properly point out, the number of cases has declined. So it does not appear to be a lack of decision-making resources. They are hearing more cases.

It would appear as if, in their judgement, they are releasing fewer people. That could possibly speak to increasing chronicity of offenders. It could possibly—and I am speculating to a degree—refer to the fact that other community programs provide for earlier release. In other words, with the noncustodial alternatives open to judges, it may well be that the inmate population is getting somewhat more difficult and in some cases, less suitable for parole.

Mr. Swart: Could I interrupt to say that is not the main thrust of the reasons given? The main thrust of the reasons given is that they were not able to obtain all the information because of the pressures on staff. More prisoners are being transferred and apparently they did not have their records. That is the main thrust of the reasons given here. That is what bothers me.

Mr. Campbell: That was a particular concern at the time this was written. There has been an administrative agreement entered into between the ministry and the board of parole to address the issue of information sharing and what you do about people who are transferred out of an institution.

We had agreed to review that around the middle of last December. We started the process then. We have an ongoing review with the board of parole about those particular issues to which they have referred. I believe they have had a fairly substantial increase in resources over the last year or so.

Mr. Daniels: That was particularly at the parole officer level and for officers who work in institutions, called institutional liaison officers, within the probation and parole service. The problem of getting the board more accurate and up to date and timely data, has definitely been rectified in the last—

Mr. Swart: What sort of increase has there been? Has it been in line with the number being heard or is it above that number? Looking at from 1979 to 1981—and I pick figures out of the air—it looks to me as though there has been

something like an 18 per cent increase in the number of cases heard. Was the number of parole officers following these cases or doing investigations showing the same kind of increase or over that?

Mr. Campbell: There was a very major shift in jurisdiction in 1978. I do not have a specific explanation for those particular numbers, but in 1978 the Ontario Board of Parole assumed, as I think is noted there, a greatly increased jurisdiction. In the first couple of years there has been a question of organizing what resources are there, organizing the increased resources and settling things out.

However, I am sorry, apart from that, I cannot give you a specific cost-benefit in terms of those numbers. If you would like to, we could research it and provide you with some further information.

1 p.m.

Mr. Swart: Perhaps we could leave it that way then because I am concerned about this and would like to know what took place and what is taking place.

Mr. Daniels: I think it is important to know that the 1981-1982 figures jump from 1,920 to 2,259, so they did show another incremental jump back in line with the 1979-1980 figures.

Mr. Swart: Yes, but starting from a different base, how many cases were heard in 1981-1982?

Mr. Chairman: Mr. Swart, perhaps the ministry can—the minister take notice of that—give some figures to Mr. Swart for that correspondence.

Mr. Swart: I would like to have that done and I would specifically like to have the figures for 1981-1982, if they are out, on the number of cases heard and the paroles granted. I would like to have some further applications, if I could, of these explanations here, perhaps giving the figures of the number of new parole officers and so on.

Mr. Chairman: Thank you, Mr. Swart. Does anyone else wish to address questions or make comments on items 2, 3, 4 and 5 of vote 1603? There being none, shall items 2, 3, 4 carry?

Mr. Swart: Mr. Chairman, before you do that, is it not adjournment time now?

Mr. Chairman: I had hoped we would either finish the estimates or go until 1:06 p.m., when the time runs out.

Mr. Swart: The time runs out at 1:06?

Mr. Chairman: Yes.

Mr. Swart: I do not think we have time, but I wanted to ask a question about the community programs.

Mr. Chairman: Yes, we do have time.

Items 2, 3 and 4 agreed to.

On item 5, community program development:

Mr. Swart: I would like an explanation on our questions with regard to the community programs, particularly where there is an employer who is paying the working inmates, whether it is at the abattoir in Guelph or those outside the institution.

How are the wages arrived at and what do the inmates themselves get out of this? I am not asking it in the sense that I think they should get a lot out of it, but I just wanted to know.

Hon. Mr. Leluk: Are you referring specifically to the Guelph abattoir, as far as wages go?

Mr. Swart: I want to know the principle followed, but I am also referring to the Rubbermaid company in one of the areas you mentioned.

Hon. Mr. Leluk: We do have cottage industry at Rubbermaid. Maybe Mr. Duggan could respond to that very briefly.

Mr. Duggan: To use the abattoir as an example, Mr. Swart, they are paid at a union rate. In fact, they are members of the union at the abattoir. They pay an amount for their board and lodging in the institution and they pay an amount for support of families they may have, anything in that regard, and then they are allowed to bank the remainder.

The other place that pays—

Mr. Swart: Could I interrupt? Do they pay at cost for their board and lodging? It would be difficult to arrive at but—

Mr. Duggan: It is \$6 a day. It is how much it would cost us to feed them and clothe them, a kind of an incremental cost.

The other industries we have are some cottage industries which do not pay at that rate, and I do not want to confuse the two. The cottage industries are at some of our detention centres and are really in the form of packaging small articles and so on. They are very popular amongst our groups of females, for example, at the Elgin-Middlesex Detention Centre.

The other place we pay union rates for the job is at Maplehurst, where they work on automotive parts.

Mr. Swart: On this packaging and so on, is the

cottage industry done by some sort of contract with the industry itself?

Mr. Duggan: Yes.

Mr. Swart: Is it basically related to what would be paid elsewhere if they had a contract elsewhere substantially below what is—

Mr. Duggan: No, it is paid at the going rate. We certainly do not undercut anyone. We charge them at that rate.

Mr. Chairman: Thank you. Being out of time, the six hours of estimates having been reached, it is mandatory that we now vote on the complete estimates.

Item 5 agreed to.

Vote 1603 agreed to.

Mr. Chairman: Do you have a point of order, Mr. Spensieri?

Mr. Spensieri: I would just like to ask the minister if he intends to introduce audio-visual material in future estimates. Since the audio

part is in manuscript form, I would think it desirable to have the audio-visual presentation done outside estimates time and ahead of the day of the estimates. In that way information contained in the audio-visual presentations could be verified by the critic and by interested parties, and they would also have a chance to reply thereto more formally.

Perhaps we can exclude the "going to the movies" time from the actual estimates time. Although I must say that the presentations are very useful and desirable, I do not think they should take up the actual estimates time.

Mr. Chairman: Thank you, Mr. Spensieri.

That concludes the estimates of the Ministry of Correctional Services.

We are adjourned until next Wednesday morning when we will deal with Bill Pr13, the city of Toronto bill.

The committee adjourned at 1:04 p.m.

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From the Ministry of Correctional Services:

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Campbell, A., Deputy Minister

Daniels, A., Executive Director, Community Programs Division

Duggan, M. J., Executive Director, Institutions Division



Ontario, *LEGISLATIVE ASSEMBLY*

No. J-4

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Justice Policy Field



Second Session, Thirty-Second Parliament
Thursday, June 10, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, June 10, 1982

The committee met at 3:58 p.m. in room 151.

ESTIMATES, JUSTICE POLICY FIELD

Mr. Chairman: Seeing a quorum, I call the meeting to order. Gentlemen, before we start the estimates, I would like to discuss the situation we have with scheduling.

Mr. Mancini is very ill and will not be back this spring session. He is the critic for the estimates of the Ministry of Consumer and Commercial Relations. I understand the Liberals have asked us if we could put the Solicitor General's estimates in lieu of the CCR estimates. Mr. Mitchell can now report on Dr. Elgie's ministry.

Mr. Mitchell: Mr. Chairman, our ministry finds it quite acceptable, as long as our estimates are not split. If we alter our schedule, then we prefer to do them all at once in the fall session.

Mr. Elston: I do not quite understand that.

Mr. Chairman: Fine. So both ministers have now been contacted, the Solicitor General (Mr. G. W. Taylor) and Dr. Elgie, and we now know they have agreed to switch places. If the committee so wishes, the Solicitor General would be prepared to start on June 18, one week from tomorrow, and the CCR would go on in the fall.

Mr. Mitchell: I was instructed to check out the fall session for the minister's estimates; frankly, they just do not want to see them split up.

Mr. Chairman: The committee can decide within its own control. So long as we stay with the order, we do not need to have the House giving us any additional instructions.

Now to the second problem. The Attorney General (Mr. McMurtry) is introducing some bills in the House tomorrow. It is my understanding from the standing orders that this committee cannot deal with estimates in the justice field while another ministry in that field is introducing legislation in the House. Therefore, it appears we cannot sit tomorrow as a committee.

Having spoken to the clerk just a moment ago, and knowing the mood of the witnesses and

spectators to the city of Toronto demolition bill, it may be unwise to try to crank them up tomorrow at this short notice, when they are scheduled to be in front of us on Wednesday.

Therefore, if you agree we do not meet tomorrow, we will commence the estimates of the Justice policy secretariat today. We will readjourn next Wednesday with the Toronto demolition bill and on Thursday we will finish up these estimates. The Solicitor General's estimates will begin on Friday, June 18.

Mr. Mitchell: It is also my understanding that when the Attorney General's bills are being dealt with, the critics of the minister are expected to be in the House. That is the other factor behind the directions given that we should cancel tomorrow. I think you are quite correct with regard to the city of Toronto bill. The people are expecting to come in at a certain time, and to do this to them today would be very inappropriate.

Having said that, I see no problem from our side. As I have told you, our ministry is quite prepared to defer our estimates. However, we do not want to start with part and then have part in the fall. There should be one continuous sweep at them.

Mr. Renwick: Your schedule is agreeable to me, Mr. Chairman.

Mr. Chairman: Was I incorrect when I remembered the standing order stating we cannot have both legislation and estimates at the same time in the House?

Clerk of the committee: Yes.

Mr. Chairman: It is some months since I have seen that. The real practicality is that the critics would be split. Then it is fine with all three parties to follow that schedule?

Agreed to.

Mr. Chairman: Thank you. The clerk will advise the ministries of that.

Shall we commence the estimates of the Justice secretariat? We have four hours. These were given to us by the House in the order in which we are now hearing them.

Perhaps the minister has an opening statement? Yes, he has. The clerk will now distribute the copies among the members.

Mr. Elston: I understood these were to be kept secret.

Hon. Mr. Sterling: Not these ones.

Mr. Mitchell: Does anyone have any champagne to toast the new minister on his first appearance in presenting estimates?

Mr. Brandt: I will give him coffee, if that is okay.

Mr. Mitchell: To have him here, after he has sat through many committee sessions as a member of this committee, I think it is appropriate we should recognize that pleasant change.

Interjections.

Hon. Mr. Sterling: Mr. Chairman, is this counting as time?

Mr. Chairman: Yes. It started at 4:07 p.m., regardless of the compliments.

Hon. Mr. Sterling: Mr. Chairman and members of the committee, I am pleased to appear before you. As Mr. Mitchell has indicated, this is my first experience in presenting estimates. In doing so, I am going to make a fairly brief statement, and then I would ask you to express any opinions and ask me any questions you might have. I have here my deputy minister, Donald Sinclair, and the policy co-ordinator for the ministry, Dr. Leah Lambert.

The ministry is a very small one, as you may have found from the material given to you. It is comprised of about 13 to 15 people, and I think it is the smallest ministry in the whole government of Ontario.

The principal reason for forming the Justice secretariat was to attempt to co-ordinate the functions of the various ministries involved in the justice area. Every second week I, as chairman, convene a meeting of the cabinet committee for the Justice policy field. I have sat on that particular cabinet committee since 1978, although I was not a member of the cabinet until 1980. I sat on that committee as parliamentary assistant to the Attorney General. So I perhaps have a deeper knowledge of the secretariat's role than one might at first glean. At our biweekly meetings, we discuss various policy proposals that are coming up from the ministries for which I am responsible, even though those ministries include all those that are subject to the justice committee estimates procedure.

Upon my appointment as Provincial Secretary for Justice, I took up the responsibilities for regulatory reform and also for freedom of information and privacy law in the province. I

see the function of the secretariat and myself as two-fold: first, to serve my client ministries, as I call them; and, second, to lead them.

In the service capacity I sit on four cabinet committees of government: the legislation committee, which is a final vetting committee for legislation going to the Legislature; the policies and priorities board, which is the impetus of a lot of the major changes to government policy; the Management Board; and the cabinet committee for justice.

In all of those committees I see my role as aiding my fellow ministers in bringing forth their proposals with the least possible problems, in so far as I can help them in clearing those problems away. In terms of the leadership role that I see for the secretariat and for myself as Provincial Secretary for Justice, I would hope to try to foster new ideas and new policy directions for the various ministries I represent.

It is fortunate that we have some people in the secretariat who have been involved in the Justice policy field for some period and who are very familiar with a lot of the agencies in North America that are involved in new and exciting ideas in the justice area. I am perhaps taking a more active role than any prior provincial secretary in this regard.

In our deliberations in the cabinet justice committee about the pressures on the justice system, all ministries in the policy field have identified the area of public education and awareness of the justice system as being particularly crucial. I intend to make this a primary focus of the Justice secretariat in future.

Personally, I believe we must ensure that the public is made fully aware of the many roles that a citizen can play in assuming individual and local responsibility for justice. It is essential, if we wish to preserve the quality of our lives, for everyone to play a part in crime prevention and in our justice system as a whole.

We face a particular challenge in trying to reach young people. Experience has shown that the under-25 age group tends to create the greatest pressure on the justice system. We must provide new challenges to these young people which will assist them in solving their own problems. We hope to encourage communities to find innovative ways to develop work skills among the young, to build in them a sense of civic pride and responsibility, and to make use of volunteer resources among the young people themselves.

We are at present preparing an agreement for citizens in the Niagara region to match up to

\$300,000 in funds, which the local people can collect from private donations, in order to create a crime prevention foundation. The investment income from this foundation will be used for the funding of the innovative crime prevention programs of this group. We will work closely with the foundation's board in the choice and evaluation of the projects. The focus of programs will be on young people and community awareness about crime prevention strategies.

4:10 p.m.

In its public education efforts in the past, the Justice secretariat has produced a variety of very well-received publications aimed at young people and at the general public. You have a list of them in your briefing material. Our latest publication, *The Justice System in Ontario*, which is the booklet I am holding up, has had extremely positive acceptance. Within days of our sending out a questionnaire to evaluate this booklet, we have received, amazingly enough, close to 1,000 replies out of the 5,000 questionnaires sent out. A large proportion of them come from teachers, of course, praising the effort, asking for additional copies and making very constructive suggestions.

I might add that, as a result of those responses, we have sent out an additional 15,000 copies of this particular publication. When we meet with professional groups in the community, we are often reminded of the value of this and past publications and are urged to produce other materials for wider or different audiences.

We have three important initiatives under way to accomplish the long-term educational goal I mentioned above. First, we will be reviewing the educational needs which we have not met to date in our previous publications and, at the same time, we will be exploring creative ways of reaching a wider audience, particularly among young people.

Second, we are participating in a network of professionals, called together by the Canadian Bar Association, to develop an inventory of public legal education and information materials and programs. We have agreed to provide office space for the initial research, which will examine existing materials, gaps and duplications in terms of all the resource material in the justice area. A clearing house for the production and dissemination of legal educational documents and programs may be an outcome of this collaborative work.

Third, we have begun to hold a number of meetings with local groups which have already

sponsored community programs in the justice area. I point to the recent Justice Week in Kitchener, which was a very successful operation. We plan to develop mechanisms which will facilitate information-sharing and foster greater involvement within and among a number of interested communities across this province.

With the completion of these three projects, the secretariat will have assumed a significant role as a catalyst for community efforts and public justice, education and citizen awareness. It is clear that the public schools must form an essential element in these efforts. Provision of up-to-date curriculum aids and the inclusion of justice matters in professional development of educators has to be enhanced.

Last year we strengthened the planning and research component of the secretariat. As a result, we have been able to work more closely with ministries in the policy field and our attempts to improve the availability of timing and accurate statistics. We have continued to play a leadership role in the implementation of the new centre for justice statistics, the creation of which came about as a result of significant provincial input, with my deputy chairing the national project.

We have been closely involved in the plans for an independent evaluation of the centre and we expect that this effort should result in a more effective mechanism for providing information about the nature and extent of crime and justice. It should lead to more informed discussions on cost-sharing and co-ordinated action among jurisdictions.

A major priority for the secretariat has been development of policy with regard to victims, particularly those with very special needs. It has become clear in recent years that the needs and rights of people who have been victims of crime have not been as clearly articulated as have those of the offender.

Although private sector groups and criminal justice agencies have provided some services for victims, there has been more widespread advocacy recently for a comprehensive and co-ordinated study into the needs of victims and the various options for government and non-government organizations in attempting to meet those needs.

I am pleased to report that Ontario has a leadership role in this area. My deputy chaired a federal-provincial working group which prepared a report on justice for victims of crime for the consideration of ministers responsible for criminal justice. The recommendations of that

report were accepted in December 1981 and a federal-provincial task force was established. This task force is also chaired by Mr. Sinclair and is expected to report back by March 1983 on the needs of victims, long-term funding implications, legislative options, co-ordinating mechanisms, community involvement and other related topics.

I know there is a change in that particular item. I thought I would make certain members of the committee were listening to what I was saying.

Mr. Chairman: Yes, and I noticed the natives started to get a little restless with that, moving in their seats.

Mr. Elston: My only concern is this committee may extend itself to such an extent it may break the record developed by the company law committee which was just recently disassembled.

Mr. Renwick: It should still be in session, actually. There is some unfinished business.

Hon. Mr. Sterling: Recently, some of my colleagues in the Legislative Assembly and myself attended a conference on crime and redress in Vancouver. At that time, it was pointed out to us that the credibility of the justice system, in some ways, depends on the fair treatment of a victim in crime. There is a very urgent push in this particular area. I would hope to be able to provide some leadership in making certain my client ministries are facing this issue head on.

In the past, in reading the estimates in Hansard, there has been some question as to whether or not there is a necessity for such a ministry. I maintain that with the new problems we are facing in the justice system and with the new computer technology, now more than ever, we are going to have to seek new and innovative solutions to old and new problems. I believe the secretariat's role of helping its client ministries, urging them to take remedial action, new action, and bringing to the forefront new ideas perhaps makes the Justice secretariat more relevant today than it ever has been.

Mr. Chairman: Thank you, Mr. Minister. I did neglect to say, technically for the record, that we were in the estimates and on vote 1301, item 1.

Mr. Elston: We are now starting, I presume.

Mr. Chairman: No. I had said we were starting before, but I did not identify the only vote and item we will deal with. The Liberal

critic may have some comments to make or some statement.

Mr. Elston: Actually, I was stepping in this afternoon for Mr. Breithaupt who had some commitments in Ottawa. My remarks will also be very brief.

We recognize, as a party, the importance of the justice policy committee in a theoretical framework. I sometimes question, as I look over the particular secretariat we are considering now and the others which are in existence, how much it has accomplished in those areas. It seems to me the particular ministers are always going to be the ones bringing forward the proposals for their own ministries. I do not know how much co-ordination is really required by an extra set of staff and individuals who are put in place to deal with more theoretical and hypothetical sorts of concerns.

4:20 p.m.

It was difficult for me at times when I was going through the briefing material to really find something to grab hold of and seize upon as the most significant portion of the work being done in this secretariat, when comparing its job and tasks with the jobs and tasks of individuals inside the ministries. For instance, there are people inside the Ministry of the Attorney General who consider how they should treat victims, how they should try to upgrade the court system and how they should try to develop a fairness in interpersonal relationships on a societal level.

It would be unfortunate to have to bring those people into a secretariat meeting just to go over and rubber-stamp some of the decisions already made internally in those ministries. I am not saying that always happens, but part of the job of these estimates is to actually come up with some solid information of what goes on behind the scenes so we can find if our money is well spent. I would be very pleased to find some of the particular incidents where the secretariat has had a significant impact on what the individual ministers want done.

I do want to comment on three or four of the primary responsibilities of the ministry. The one that stuck out most and was also mentioned to us this afternoon in the opening remarks by the Provincial Secretary for Justice was the educational function of his secretariat. It seems to be a very important function. I noticed high emphasis is being placed on getting material out to the individuals, out where people can be educated

about some of the useful aspects of our legislation.

When I was going through the briefing book, I noted—I cannot put my hand on it right now—there is a table of some of the printed materials and publications you have available to the people of Ontario. I noted you had statistics to show how many English copies were sent out and how many French copies were sent out. It seemed strange to me you would not have had a section in there to tell us how many copies of this information were available to people who speak Italian. There are a very significant number of individuals in the Metropolitan Toronto area and in the province who primarily converse in the Italian language. There are a number of people who speak Portuguese or Hungarian.

I am wondering if the minister has some comments to advise us how he hopes to satisfy what I think appears to be one area in the education field which can be developed more fully and more positively on behalf of the secretariat. Unless you address that particular problem, you are never going to come to a satisfactory conclusion about your educational efforts.

There is one other aspect I want to highlight, namely, the freedom of information protection of individual privacy. It is one which has been going on for some time and it is one which we were told by a previous minister prior to his move to a different portfolio was in the form of legislation which was ready to be presented to the Legislature. The current minister has established a new study group to come up with another report on the matter. We have had some indications of his dealings in cabinet with some of the points of view which may cause concern in the bill as it was originally drafted or in the manner in which the current minister has drafted it.

For our own edification, I am wondering where it is at this stage and when it is going to come out, although we have heard that it may be available for the fall. If it may be available to be presented to the Legislature in the fall, to whom are you making approaches with respect to input on the policy behind the legislation?

On various occasions this committee has been presented with legislation which some parts of Ontario contended they had no input into at all. I hope the same cannot be said for this particular piece of legislation and that there was a major effort made to consult all the

interest groups which have been identified with the particular issue at this point.

I do not know exactly why it has taken so long for this legislation to come into operation. I suspect there was a great deal of hand-wringing going on behind the scenes. There are probably a lot of people who are resisting the whole idea behind the legislation. However, in light of the promises, or at least suggestions, made by the previous minister and this minister, we should have that brought on in a hurry. In light of what happened to the bill proposed by our critic for this ministry, Mr. Breithaupt, it calls for a mandatory and quick response to the lack of legislation in the area.

I also have to ask if the minister would address how close to the federal legislation his particular legislation will be. Perhaps he would like to make those comments later on in answering our points of concern.

Another concern we have with respect to the secretariat is that we do not feel there is adequate attention being given to the funding of the Ministry of the Attorney General. This is one point on which Mr. McMurtry, myself and others in our area agree on wholeheartedly, particularly when we see Mr. McMurtry stating that backlogs in the courts may be caused by some underfunding and inability to address the increase in court action in Ontario.

With a budget of about \$22.8 billion, it seems to me that surely the Ministry of the Attorney General, which has probably the highest profile and is responsible for the most basic sort of social interaction, should be funded by more than some \$218.9 million. That does not sound like much for the budget.

After comparing it to other provinces—not all provinces are alike—British Columbia often stands out as a comparable guideline in these areas. They spend about four per cent on their attorney general's role. It is almost four times what we are spending. I do not have it in total dollars in front of me, but it is something I could easily get.

I noticed in the briefing book that one of the goals of the minister of the secretariat is to make sure people are treated alike. Surely if that is the case, there has to be a greater emphasis placed on making funding available for a person to have access to the courts and having it in a fashion which appears to be equally available to a person whether he is rich or poor. It is a concern I have about some backlogs, that the individuals who may be able to afford slightly better-trained counsel and counsel more expen-

rienced in the legal field are able to move quicker to head off any possibility of being caught in the system, which does get backlogged.

Also, I think it tends to make the person who has fewer resources available feel that he will be the loser in any event if he does proceed and the backlog causes his case to be deferred for a year or two. It may not be a big problem in some of the larger centres, but I can tell you, in speaking with some people from areas where the Supreme Court does not sit every day, a number of people feel they are being discriminated against on that level, having been placed on a list and then dropped from a list only to wait until the fall when things come back.

4:30 p.m.

Perhaps if there was some more funding which could go to the administrative programs in our courts and the justice field, there might be at least more time available to some of the other less populated areas in our province. It might make some of those citizens feel that justice was equally available at the Supreme Court level.

Supplementary to that, with respect to the legal aid system, there is a great deal of concern about its operation now and how much further it will be able to develop, how relevant it is going to become in the future. I am also concerned that the Justice secretariat should comment to us on its deliberations with respect to that program to see if there has been any discussion among the ministries how they might fund a bigger and better scheme, perhaps through a combined operation.

I know it does not fall specifically to this minister, but in terms of making opportunities equal for people in the province, the legal aid system, with that avowed principle of allowing universal access to the courts, should come under a bit of scrutiny in the secretariat. Perhaps the minister will have some comments on something that is being done to salvage that program.

I want to come to something now that has only recently come up. That is with respect to the stories that were just released about the use of surrogate mothers, giving birth to children for those who are not able to have their own. It seems to me that this is a particularly difficult problem to tackle. I presume that the secretariat might get into this sort of discussion, which might come to develop a government-wide opinion on this difficult moral view.

The question is, how far does a society go to control the fetus? Involved in that is not only the

surrogate mother issue but much deeper discussions on other levels with respect to the unborn child. It might be of interest to the committee to hear if the secretariat plans to initiate studies or release policy statements with respect to that.

So far, there does not seem to be an adequate response in a legal framework until some action is taken whereby somebody breaks a law. That was the overall feeling I got from the response of the Honourable Mr. Drea when he commented in the House that until something was done illegally there was nothing his ministry could do.

I suppose that it is one of the new areas for which the secretariat would probably want to develop a policy. It is one of those things that I do not think any of us thought about when we were going through law school, except in a very hypothetical situation. Just as we were not aware of the computer age coming upon us, I do not think modern developments in medicine are causing a great concern for society. I think they ought to be tackled, and perhaps they are being tackled under the auspices of your biweekly meetings.

I have one other very quick comment about a problem which has become dear to our chairman, myself and others in the profession, and that is with respect to the public criticism of the bar. I do not think Mr. Laughren is here, but we have had some mild discussions at times in this committee about particular practices. It would be interesting for me to hear whether the secretariat has—

Mr. Stevenson: About the bandits, you mean?

Mr. Elston: No, that is a particularly partisan comment, directed from across the way. I refer to comments coming not only from members of the public in general, but also that have been directed at the profession by judges such as His Honour Judge Cartwright and, more recently, by His Lordship Mr. Justice Montgomery.

It seems to me that the pronouncements coming out of that tend to confirm a great number of the suspicions that the public holds about the practitioners in the legal field, particularly when the comments are leveled at them by judges. I think it is extremely harmful, and not only to the individual person who may be singled out. It may be a very valid criticism for that person, but it reflects on every other person to whom a member of the public goes for assistance in the court or whatever sort of matter.

I think they tend to get the impression that there may be a group of individuals in the

profession who might be described as bandits, taking advantage of the public in one sense or another. That is perhaps a result of backlogs in the system. A fellow may not turn up for a particular event, a hearing or whatever, and the whole system of justice falls into a turmoil.

I am hoping the minister may be able to tell us that there is consideration of the problems in that area as well and if there are some policy statements to be made either through his secretariat or to be directed to the Attorney General's office to correct the problems. These have certainly become relevant to the public at this particular time.

I have some current concerns about the Young Offenders Act and a couple of other matters, with the exception of asking whether there has been any discussion of the administration of justice problems in your secretariat. You may have considered the speeding up of the civil procedure amendments which have been widely spoken about over the last few months.

I will stop my remarks at that point, and perhaps we will get in some questions later on.

Mr. Renwick: I noticed, from looking at Hansard for these estimates last year, that it was just about precisely a year ago that we were sitting in estimates.

I do want to say that I welcome the change which has taken place as to the importance of the Provincial Secretariat for Justice, which is evident from the statement of the minister and from the information which was provided to us. Over the years I shared some reservations about the provincial secretariat, not about its potential value, but about the way in which it was being dealt with at the time when the numbers of the ministers were severely reduced because of duplications in appointments for a period of time; and, secondly, because I had a very real sense that the ministers met only intermittently and without any particular co-ordinated role in their activities. I think that was mainly because the Provincial Secretary for Justice had had departmental responsibilities and could devote only a portion of his time to the work of the secretariat.

4:40 p.m.

I think it is fair to say that the initiative in leadership in the provincial secretariat, over the period of time that it has been in existence, has been due in large part to the deputy minister. He has provided the holding ground in the development of policy which has been essential to the work. However, I not only welcome—and I

want to make certain it is clearly understood—your appointment on a full-time basis in this ministry, I also welcome the initiatives and the leadership you are now providing for the secretariat.

I know that there is always a sense of the Scylla and Charybdis of questions of being. Are they practical and valuable, or are they academic and intellectual? However, as long as the framework of the secretariat's work is directed towards this field of policy, I am quite content that you will successfully avoid the problems of being involved in too many minute details which may appear to be really matters of departmental concern and the sense of academic exercise which some of the topics may lend themselves towards.

I have no real fear of that. I think the statement you have provided us with and your opening statement today ease any concerns I have for the time being about the direction and thrust of the Justice secretariat.

I am sure if my colleague Jim Breithaupt were here he would express his appreciation of the initiative you took to invite both of us to attend the regulatory reform conference in Vancouver which had the imposing title of the National Symposium on Crime and Redress.

Mr. Elston: I did not mean to indicate a lack of good favour with that. Not having been along, I am not unhappy about Mr. Breithaupt representing us. I am deeply happy with that.

Mr. Renwick: To invite members of the opposition caucuses—and I do not mean necessarily only the specific critics of the Justice policy field because there may possibly be areas of concern to you where members of the opposition parties would be more directly related to the particular topic being discussed—I thought was a wise initiative.

From time to time it is extremely helpful to get some correction of the myopic view of the world one gets within Queen's Park. I enjoyed both the conferences I attended even though, if I may say so, I find regulatory reform a topic which has elements of dreariness about it which are a little bit depressing on occasion, when you get right down to what the regulation is in a particular book under a particular statute. The general framework has a certain fashionable appeal, of course.

I have a number of points and there is no particular theme about them. They are certainly not exhaustive, but they are matters I think are appropriate to suggest, to comment

upon or to ask questions about. I would like to proceed to do that.

First a point related to the numbers of hours devoted to estimates and the apportionment of that estimate time among the ministries which compose the secretariat as such. I think, if I can count correctly, we have a total of 55 hours devoted to estimates. What usually happens is I get a telephone call from the assistant to the House leader of the NDP asking me how I would like the time to be split.

I think it would not be encroaching on the right of the assembly to decide how it will spend its time if there were perhaps some input from the Provincial Secretary for Justice after discussion with his colleagues as to how we split up the time in relation to the work. Again, I say it could only be a suggestion. The House is very sensitive of its right to make the allocations.

For example, we were able to get the Ministry of Correctional Services' estimates increased slightly this year because it seemed corrections needed a degree of attention it had not been receiving in other periods of time.

I do not know, for example, what merit there is in the Ministry of Consumer and Commercial Relations having 20 hours as opposed to the Ministry of the Solicitor General having 10 hours and the Ministry of the Attorney General 15 hours. I tend to think four hours for the provincial secretary is about right. I do make the suggestion that perhaps we could have some thought about the number of hours devoted to the particular ministries.

The second matter is that, although I do not necessarily like being inundated with paper there are a number of publications reported in your estimate material for this year which I was not particularly aware of or knowledgeable about. I would appreciate receiving a list of all of your publications—if that is an exhaustive list, fine—but I would like to have a list. Then I would like to have an opportunity to indicate the ones I would like to be put on the list for.

I say this particularly because some of the work the provincial secretary is doing is of very real, pertinent importance to me in particular areas I am interested in and also in relation to my own riding.

I am not going to take up a great deal of time commenting upon the thrust in the educational field with respect to justice matters. That is a keynote part of your opening remarks today and of your statement. I want to make just one point. The problem of translating matters related to justice from the jargon of the law into language

people understand is not one that can be left to lawyers or to people with other than professional communication training.

I find, day in and day out, the words I think are communicative words, because I am in the legal profession, are noncommunicative words to most people. It is very easy to slip into a shorthand kind of jargon in talking and it just does not make sense. It applies not only to my own profession but to many others. If you are venturing into that field, I believe you have to have people who have the ability to communicate.

The second point I would make is there is a magnificent facility of which I am staunch supporter: the educational television in the province. I would hope, without burdening us with all sorts of moot courts of one kind or another, that there would be some positive and effective way of presenting justice questions of serious social import in an educational television series.

4:50 p.m.

If I may digress for a moment, one of the things which convinced me more than ever of the value of educational television was that Music of Man project which was participated in by a public television station in Tennessee, the educational television authority here and I think the British Broadcasting Corp.

With care and attention and the co-operation of appropriate stations, perhaps the Boston station, TVOntario here and the BBC in England, an immense amount could be done to put on a very effective program—perhaps even a series. I recognize it would take time, but the quality of it could be great.

You would get a reasonable amount of attention even in Canada, if for example Mr. Justice Denning—or other similar persons both here and in the United States and elsewhere—were asked to participate even in the bedroom of his home on matters such as this. You have my support on it.

Those were just two comments and I am certain you are aware of both those areas, but I wanted to show my interest in that particular field.

The next point I would like to touch upon is the bill related to making permanent the unified family court in Hamilton-Wentworth. I am very concerned it is before us and will be before the assembly.

The point is that it was an experimental project. While it has been under the Ministry of the Attorney General I have not seen an evalua-

tion study, nor was it provided at any time, of what the project has accomplished, what it has designed, what the design of it was in the original instance—we have some inkling of, of course, from the original inception of it—and whether or not an evaluation indicated it achieved any of the goals it intended to achieve.

There are those people who think it is an improvement as long as you unify any of the courts in Ontario. I do not happen to live in that world. I want to be able to support the deletion of the self-destruct provision of that bill, but I have not had any evaluation study tabled in the assembly. I will be asking for it. I assumed we would get it.

We will have to deal with that bill or it will self-destruct on July 1, so that bill will come and go. There is the other project's evaluation which I do not know anything about, and again it touches upon the Ministry of the Attorney General, but they are a very busy, practical ministry.

We have no evaluation of the experimental project in the municipality of Metropolitan Toronto in the provincial court, civil jurisdiction, project. There were high hopes for that court. I am concerned that I have not heard anything further about how it is working, because that was designed to meet the kinds of problems people in my riding had, because they do not get to the higher strata of courts. They get to the small claims court and the courts of that level.

I would ask whether it is up to the Ministry of the Attorney General to produce an evaluation for us or not. It is not my problem but I would ask the matter be raised, sir, through your secretariat. As I say, I hope to get an evaluation and some assistance on the uniform family court bill.

I think it was a year ago and perhaps it was longer, that all the members of the committee were very much appreciative of the initiative which was taken with respect to the services for victims of sexual assault and the development of that standardized sexual assault evidence kit in co-operation with the Ministry of Health.

I would like to suggest—and there was some general talk at that time that, having just completed that one, it was probably much too early to evaluate it—that there would be a very real service provided by a child abuse evidence kit. One has to consider that, at least in some instances of child abuse, matters get to a hospital at some point, or get to the attention of someone in the medical profession, the police, family services or the children's aid society.

There must be at some time a vast number of situations which comes to the attention of institutions, facilities and agencies available in the province which deal with children, including the school system itself and the day care nursery movement which is developing in the province. All of those are areas where, with care and skill, a child abuse evidence kit could be developed to provide some further security to children. The knowledge that such a kit was around, that there was a co-ordinated method of collecting evidence, might allow us to make some significant inroads on this problem which at present tends to be fashionable for a short period of time, dies out in the news, and becomes fashionable again.

I have no knowledge of whether it is possible to make an analogy between the sexual assault evidence kit and one for child abuse. I assume it would be possible to develop an evidentiary kit in the field of child abuse.

I think that if there were no other justification for the secretariat, the work which has been done in the field of statistics in the justice field is in itself an answer to any criticism if one were to make it.

I am not going to repeat the concerns because I know the provincial secretary and the deputy, as well as the Minister of Correctional Services (Mr. Leluk), are aware of the problem I have with the statistics of the correctional system as it relates to the overall justice system.

In very synoptic terms it simply said that if you add more police, you find more crime; you need more judges; you increase the number in the courts; you find that instead of having alternatives to sentence they are additional to sentence; you have more and more people in prison, on probation and serving under community service orders, and what started out as a reform movement simply becomes an increase of the degree to which the tentacles of the state continue to have a hold on more and more people over longer and longer periods of time.

I believe the statistics will prove that this is the case but certainly, without the work that was done by the task force under the chairmanship of your deputy on a countrywide basis, no one would know. We would all be involved in anecdotal discussion of the question without any overall statistical view of the impact of what we were trying to do.

5 p.m.

I commend the ministry. I commend the deputy on that work. I just hope it will go forward with tremendous imagination so that

we can get some handle on this whole question of immense institutional involvement, at all levels, in something called the administration of justice system.

I do not believe we can come anywhere close to starting to solve those kinds of problems unless a sound statistical base is established for it. I would say that, if there were occasion for my colleague in the Liberal Party and myself to have some further understanding, perhaps by visiting the centre for statistics to get some sense of the scope of that work, it would certainly be most welcome to me.

I think the Ministry of the Attorney General has lacked any adequate basis of statistics over the years. The analysis of crime and how it is presented, through statistical purposes, has the same problem.

My brief connection with corrections would indicate that the validity of statistical information and the quality of the imaginative presentation of it is essential to dealing with the kinds of policy questions which your secretariat must deal with.

I would now like to move to another element in the question of injustice for victims of crime, and I use this in a distinctive way. I have raised the case of Mr. Derrick Cole with the Attorney General (Mr. McMurtry) in the House by way of question. Should I ever reach the top of our question list, and that coincides with the attendance in the House of the Attorney General, I hope to raise another instance of it. It involves a different kind of victim of crime and it relates to the kinds of questions which surround the two instances. I am going to deal with them just very briefly.

I have difficulty generalizing, and I have read a goodly part of the work done in the early part of the 1970s in the field. I am making no value judgement statements about the particulars of the cases I am going to raise, but would like to illustrate my point.

I believe there was an injustice done in the case of Mr. Derrick Cole, who was convicted of a first degree murder charge and served 3½ years in jail when the Court of Appeal ordered a new trial on four separate and distinct grounds. In my judgement, that is as close as the Court of Appeal has come to saying simply that there was a total miscarriage of justice and the man should never have been convicted.

The new trial was ordered. A judge was dispatched to take evidence on commission and, as a result of the evidence he took on

commission, he came back and said there was no way in which there was any case.

The Attorney General entered a stay of proceedings. A year expired. The stay became permanent and Mr. Derrick Cole is walking around on the streets, never having been—as a result of a new trial—convicted or acquitted, but in some nebulous state.

My point was that he served 3½ years. I believe investigation would indicate that this is an unintentional injustice resulting from the system. I believe the system should have sufficient confidence in itself to recognize that every now and then there is the kind of injustice which should be recompensed by way of compensation.

The case I am going to raise with the Attorney General, when and if I can, is another case in which a man was charged with second degree murder and was held for 500 days in custody. He was acquitted on a jury trial in circumstances which lead me to believe that is another injustice.

I do not know what the principles are on which you compensate. I totally disagree with the different grades of acquittal in our system. There are those who are acquitted and are innocent, and there are those who are acquitted because the charge against them has not been quite proved, and so on. I believe the system of justice has to be rough and ready, straightforward and simple and an acquittal under our system is equivalent to a statement that you are innocent of the offence.

I do not like someone fine-tuning the system to create degrees of innocence in the justice system. I do not go that road.

Neither do I go the other road which says everyone and his brother who is charged and acquitted under the system should be entitled to some kind of costs and compensation from the state. It may sound callous, but I think we pay a certain price in our society for having a system of justice where one of the hazards is that you can be improperly charged. By and large, we have to live with that; by and large, one is not affected beyond something called inconvenience.

Notice I am not talking about whether or not someone should get the costs of their legal expenses. In the instances I was talking about there are two people, one 3½ years in jail, the other 500 days in jail. With care and attention, and on a very carefully organized study of that kind of example, it may be possible to derive a principle upon the basis of which payments

could be made to compensate for that kind of injustice.

As I said, I have read the report of the Law Reform Commission of Canada. They, strangely enough, commissioned a study by the man whom we heard speak in British Columbia, the next dean of the law school out there, Peter Burns. The Law Reform Commission of Canada used some of this material but did not adopt his process because his process was going to create different kinds of innocence in the long run. They made a much broader scheme of approach.

As a result of the Hospital for Sick Children question, we have all heard the argument about compensation for costs for legal fees. The study made some years ago by Dahn Batchelor, the executive director of the Fortune Society of Canada, has been resurrected. The Attorney General, when he was in private practice, and a number of other people from the bar, participated in the study and nothing came of it. I found the rules that came out of that to be well motivated but not meeting the kind of problem with the degree of finesse and skill I think it requires.

You may now find it the appropriate time to sort out that kind of question: whether or not the system does create, on occasion—through incompetence, through inadvertence, through conjunction of events—these kinds of injustices. I have been very careful in the selection of the cases I want to raise on this issue, because I do not want to get involved in some broad, sweeping statements in an area which is extremely difficult.

I think it is time in the policy development field that that area might well be looked at, and it is not unrelated to victims of crime. It can be said, in the two cases to which I have referred and in the opportunity I have had to look, that each of these men were in fact victims of crime in a different sense. I certainly know that had either of the two men come from any of the more well-to-do areas of the society, neither of them would have suffered the periods of incarceration which they did suffer. Absolutely no question. Any lawyer who reviewed the two cases would come to that conclusion. There is an element of class injustice in the two cases to which I have referred.

I would like to move on to another area. The revenues of the province are uppermost in everyone's mind these days. While the administration of justice may be very good at meting out justice and imposing fines, it is very poor as a revenue collector. It is time that the collection

process for fine recovery be totally removed from the Ministry of the Attorney General, or from the police, or from the administration of justice, and be placed where it should be placed, with the Ministry of Revenue who are charged with the collection of moneys due to the crown in any way, shape or form.

I have not been able to get a figure to illustrate my concern, but I think that if one investigated the fines owing in each of the provincial courts in each of the judicial districts of the province that have been outstanding beyond the time when they were ordered to be paid, the number of dollars would be immense, and the waste of time and effort on the part of the police and others to try to serve the warrants leading to the collection of it, would be ridiculous in comparison to what they should be doing.

It is true in Toronto that if you were convicted today of impaired driving and fined \$300 and were given by the court 60 days or 90 days to pay, that if you were not knowledgeable about the system you would expect something to happen at the end of 60 or 90 days. You would be surprised to know that nothing would happen for at least a year, a year and a half, or two years before anyone got around to serving a warrant on you with respect to the failure to pay that fine.

That is only one instance. The other answer which is always given: "It is really not the criminal law system which produces these fines. The collection system is not all that bad in that field. It is the highway traffic area, or it is the bylaw enforcement fines, one kind or another."

I am simply saying there is no excuse for the failure to collect the fines which are due at the present time to the province under any of the statutes from which fines are derived by the province. The Ministry of Revenue should be charged with that responsibility and I would urgently request you to at least canvass that idea as a method of dealing with the question.

The next point I want to raise is we have had these two occasions where there have been abuses of Ontario law. In the one case a lawyer from Buffalo came across the border and was able to seize some funds without the intervention of any court process whatsoever.

The other abuse of Canadian law occurred when the person in Ontario was abducted from Ontario to Florida, charged and sentenced, and is now in prison in Florida.

I recognize that those are matters which may well be subject to communication between the

Ministry of External Affairs and the Department of the Secretary of State in the United States. I do not know whether or not there has been a formal message sent from the government of Ontario to the government in Ottawa expressing our extreme concern about that kind of question. I think that it is an abuse of our legal system which fortunately does not occur very often, but two in a very short period of time are just two too many.

I would hope, sir, that you would find out if a stiff message has been conveyed to the government of Canada about what it should be saying to the U S government regarding this kind of activity; also the question of the possible extradition of the body snatchers who came here and took that man to the United States.

Again, I am not supporting whether he was or was not subject to process, but due process is important.

On the next item, sir, when we were in Vancouver chatting socially on one occasion you were good enough to refer to the fact that you might well want to proceed with some consideration of Bill 90, which I had introduced, regarding the question of preventing unjust enrichment through the financial exploitation of crime.

My ballot on the private members' hour—I cannot tell where it is at the moment—is certainly not in sight. I think it takes 62 Thursdays to get through everyone in the House and that is a lot of Thursdays.

I may say I have absolutely no pride of authorship. If you, sir, would like to introduce a bill and have it referred out on the clear understanding that it is for discussion or assessment, I think it merits consideration in the limited world which it covers. I think it is something which, with co-operation, could be passed federally and provincially and be in force across Canada in such a way that would protect all the instances involved, but would not allow criminals or accused persons—as I have defined them—to benefit from the publication of their experience at the expense of those who were victims of the crimes.

I do not see any reason why these things should take a long time. The counsel for the compensation board in New York state has indicated quite clearly to us that it is, in its own way, performing a useful function and that it has been duplicated in a number of other states.

I appreciate your interest in it and I would hope that in some way the matter could get a

little better light than I can shed on it by introducing it as a private member.

The next item that I would like to ask about is the impact of the Young Offenders Act. I recognize the immense problems you will undoubtedly have because of the age question, and the impact that it is going to have. However, your secretariat has been the government lead in the whole question of collaboration with the federal government on the question of the Young Offenders Act, and I would therefore assume that you must be the lead ministry in co-ordinating and providing the initiative to solve the other related problems.

5:20 p.m.

There was a fascinating editorial in the *Globe and Mail*—not many of them are fascinating, but this one was—where the whole question of truancy is now going to have to become a matter of amendment to the Education Act of Ontario, which will raise for the first time a look at the whole social policy involved in truancy and what should be done about it.

I am asking really what is the fallout of the Young Offenders Act in relation perhaps to other statutes as well. That particular editorial was helpful and I would appreciate it, sir, when you reply, if you would perhaps comment somewhat on the present state of the Young Offenders Act, the question of age and the related fallout problems which the Young Offenders Act creates for the province.

The last item I would like to turn to is in an area which I have not followed all that closely, but I do want to make a couple of comments about it; that is, the question of freedom of information.

I have asked my colleague, Donald MacDonald, if he would come to the next session because you, sir, know of his continuing interest in this problem. My remarks are simply my own, off the top of my head comments, of the concerns about the morass in which this whole problem seems to have become immersed.

I have read with a considerable amount of interest the statement of Alan Pope on October 9, 1980, when he was the first minister responsible for implementation of the freedom of information and protection of personal privacy questions. I am not going to berate the minister about the length of time it has taken, but it did raise a certain number of concerns with me.

One of the particular points I want to raise is a quotation from it:

"At the same time, I have asked the Management Board of Cabinet to review the commis-

sion's recommendations concerning protection of individual privacy. The board will determine which recommendations about data collection and storage practices of the government can be implemented under existing legislation.

"The aim is to provide even greater protection of personal information collected by government about an individual. Management Board will also produce an index of all computer and electronic data systems now used by the government to store personal information."

I would like to know whether or not that nonlegislative part of the project has been developed in any way because, at that time, Mr. Pope went on to say: "I have already received from Management Board some preliminary reactions to the commission report. They are very encouraging and I fully expect to have further announcements concerning this in the near future."

I may have missed them, but I do not believe there have been any further announcements on that area; perhaps there have. The minister nods that yes, there have, and I will look forward to some enlightenment on that or reference to it.

My second concern with respect to freedom of information came about because of the bill on freedom of information introduced by my colleague and friend, Mr. Breithaupt, which was debated a week or so ago.

I began to get worried about the position of members of the civil service under that bill. Succinctly, I hope, my concern was that if you provide a pathway through which you are to get information from the government—in other words, a formal avenue of request and response—I have very serious concerns about the rigidity of the oath of office which every civil servant is required to take.

It states as follows: "I"—So-and-so—"do swear that I will faithfully discharge my duties as a civil servant and will observe and comply with the laws of Canada and Ontario and, except as I may be legally required, I will not disclose to or give to any person any information or document that comes to my knowledge or possession by reason of my being a civil servant."

I would assume every communications officer of every ministry of the government is in breach of this oath. The only persons who can make any statements are the ministers of the crown. There is certainly no legal requirement to shovel out the propaganda which they shovel out for us every day. They are disclosing information which came into their knowledge

or possession by reason of their being civil servants.

I do not know the extent to which that oath is meaningful. There is a place for an oath of loyalty or responsibility in a civil servant-government relationship. I would think the moment a proper avenue of obtaining information is provided, the rigidities of that oath will become very apparent and will be seen to be too strict. I do not know how you answer it and I do not pretend to have the answer.

I am not suggesting, for a moment, that I am an advocate of "brown-paper baggery" among the civil servants. Every attempt to provide more information has correlative hazards and that is one which should be of immense concern to the civil service generally and to the Civil Service Commission in particular. That should be looked at.

My fundamental concern is that somehow or other the guts of the freedom of information question are going to be lost in the process. From the time one puts in a request for some piece of information until one gets or is denied the information, it will have long since been of any particular significance.

This is not a legal lecture, but I was anxious to try to get back to the first principles of the question. With great temerity, I am going to refer to two House of Lords cases in England which are well known to lawyers but perhaps not to others: *Duncan versus Cammell, Laird and Co.* in 1942; and *Conway versus Rimmer* and another in 1968. Those particular cases illustrate the principle which should be embodied as such in the bill. The bill has to be stated in terms of a principle. I happen to be an adherent of the view that the matter, if there is any problem about getting it, should be decided in a court and by the court. That is my view.

I am going to quote very briefly from the rather lengthy judgement on the original case, which took place during the war and was a serious matter at the time. "The essential matter is that the decision to object should be taken by the minister who is the political head of the department and that he should have seen and considered the contents of the documents and himself have formed the view that on grounds of public interest, they ought not to be produced either because of their actual contents or because of the class of documents (for example, departmental minutes) to which they belong."

He goes on to say if the minister is not available, the senior member of the department should be the one who makes the objection.

That is a principle. I am not suggesting it has to be quite that rigid, but that is a principle.

5:30 p.m.

He then went on to make this significant distinction; if the crown objected, that was the end of the matter. While the matter had to come before the judge for the decision, if the assertion was made it was not to be disclosed, the court, for practical purposes, had to accept that decision—that was in 1942—without examining the documents.

Then he went on to explain all of the things the minister should not do; he should not take political advantage of it and so on. There are some very instructive and useful comments which, if I had more time, might be worth stating.

In that case where he was counterpoising the interests of the state against the interests of the public, in this case the interests of the public and the administration of justice, it can be read, "the interest of the public in the right to know, to equate what was being said." That statement clearly showed the privilege could be asserted by the crown. That was the end of the matter, even though there were some very instructive things said about matters which the minister should take into account. But he did not have to justify his objection to it.

Later on, in 1968, in the Conway versus Rimmer case, that decision was altered and the principal decision was that the proper test, when privilege is claimed for a document as being one of a class of routine documents which will be injurious to the public interest to disclose, is whether the withholding of the document is really necessary for the proper functioning of the public service.

He goes on to talk about the kinds of documents which ought not to be disclosed and so on. He says there is no doubt the judge should examine the documents in that case and be satisfied the public interest is not overridden by the state interest.

The problem and the fear I have is that the statement in those cases provides a guide to the generalization of the principle, but is much too restrictive in the democratic kind of society we now live in. But I make the point that when one reads the decision in Conway versus Rimmer and another, while it points to the general principle, the way in which the court then expressed the way government can withhold information from the public is no longer consist-

tent with the kind of pressures on government to provide access to more information. I would not accept the mere statement of the adoption of Conway versus Rimmer, but the two cases certainly point to the road in which a general principle could be stated.

With great respect to my colleague, Jim Breithaupt, I was hoping he would be here today because I was not able to participate in the debate the other day. My sense was that you would never get anything out; once you had asked, you had might as well forget about it until you were either denied it or received it, one way or another. To come to grips with the issue of whether you were going to get it or not going to get it was a long way down the road.

I think you have to go to general principle rather than to precise process. In the question, I think you have to almost get back to the fundamental principle that everything is done in the name of the minister. If there is a request for a document and there is any question about it, it has to go up the ladder in whatever ministry of the government it is, until you get a reasonably quick answer either from the deputy or the minister himself, so that you can join issue on the question of whether or not you want to have whatever recourse you may have to the court.

I know there are 1,001 different views on that question, but I wanted to reinforce the need to get back to something called first principles.

I am sure the provincial secretary has read and reread those two cases quite recently and has them by his bedside. I would hope they would provide some guidance on that question.

Mr. Chairman, if I may say so, I have welcomed the opportunity to clear my mind of a number of these items that have been cluttering it up for so long. I can now cross them all out and I have no further comments.

Mr. Chairman: Thank you, Mr. Renwick. This appears to be a fairly opportune time to break because of private members' hour.

Mr. Elston: Just before we do, I neglected in my opening remarks to extend our party's official welcome to the minister to this, his first estimates. I wanted to rectify that grave oversight at this particular time.

I was entranced by the material which was available in the briefing book, and his opening remarks, and overlooked that very happy duty I had to perform.

Mr. Mitchell: If it had not been agreeable, you would have said you were being set up.

Mr. Chairman: Shall we adjourn until June 16? That is when we will have the private Toronto demolition bill in front of us.

Would you please try to be here right on time at 10 a.m.? I am not sure what will be greeting

us, but it would be best not to be 20 minutes late trying to get a quorum. In committee room 1, please. We will have the same two committee rooms set up, committee rooms 1 and 2.

The committee adjourned at 5:28 p.m.

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No. J-5

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Justice Policy Field



Second Session, Thirty-Second Parliament
Thursday, June 17, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, June 17, 1982

The committee met at 3:34 p.m. in room 151.

ESTIMATES, JUSTICE POLICY (concluded)

Mr. Chairman: I will see a quorum. We will not deal with Mr. Renwick's motion until a motion comes in. Here is a motion now.

Mr. Breithaupt: Mr. Chairman, I would like to suggest, by my calculations, that if we had started at 3:20, we would have completed the time available to us for these estimates today. I am certainly prepared to forgo the 10 or 15 minutes that would bring staff people back tomorrow morning for just a few minutes.

I wanted you to know I would be quite content at 5:45, when we have to go back for the private members' time, to consider these estimates will have carried.

Mr. Renwick: I am content on that because I have just received word the bills of the Attorney General (Mr. McMurtry) will be considered tomorrow morning in the assembly. There should be no point to—

Mr. Chairman: I am glad you have a better pipeline than we do.

Mr. Breithaupt: I was not aware of the other, Mr. Chairman, but perhaps the committee could agree not to sit tomorrow, unless other things had been planned during these couple of days when I, unfortunately, have not been able to be with you.

Mr. Mitchell: Mr. Chairman, had we not previously agreed not to sit this Friday morning because of the changes in our scheduling and so on?

Mr. Chairman: No, we were going to finish up these estimates we are in now.

Mr. Mitchell: In any event, I have no objections because I think the critics have to be in the House for the Attorney General's—

Mr. Breithaupt: It would only be a few minutes.

Mr. Mitchell: Yes.

Mr. Breithaupt: We may as well say they have been completed.

Hon. Mr. Sterling: I appreciate that very much.

Mr. Chairman: I guess we are ready to go. We will start the meeting officially, not estimates, I am sorry, Mr. Minister.

We have in front of us a motion Mr. Renwick tabled at about 12:30 yesterday. The clerk has taken the liberty and, I believe, with Mr. Renwick's permission, has put it in typed form. Is that correct, Mr. Renwick?

Mr. Renwick: Yes, it is put out.

Mr. Chairman: Mr. Renwick has moved that the committee adopt the following order of business:

1. Completion of the estimates of the Provincial Secretariat for Justice.
2. Private bills Pr19, Pr23 and Pr26.
3. Completion of public hearings, clause-by-clause consideration of report of Bill Pr13, An Act respecting the city of Toronto.
4. Private bills Pr6 and Pr10.
5. Estimates of the Ministry of the Solicitor General.

Mr. Renwick: If I may speak just briefly to the motion, I am not engaged in a protracted debate over it. I just wanted to give the reasons I put it forward.

Item 1 we had already agreed upon. Item 2 are the three bills which were to come before us, as agreed, at 10 o'clock next Wednesday morning.

If I could skip to item 4 for a minute, Bills Pr6 and Pr10 are private bills which had not, as yet, been referred to this committee but may well be.

Mr. Chairman: Oh yes, they are.

Mr. Renwick: Are they? I am sorry.

Mr. Chairman: Windsor and North York. One is adjourned sine die and the other we are awaiting.

Mr. Renwick: Excuse me. Private Bills Pr6 and Pr10, and item 5, the estimates of the Ministry of the Solicitor General.

In other words, what I am trying to say is it is essential this committee give its priority to getting the private bills which stand referred to us completed and out of the way as expeditiously as possible and, in particular, because of what is now four days of public hearings that have been held on Bill Pr13—and there are still

some public hearings to be held—that that bill be given priority before we get involved in another series of estimates in this committee.

I think it is only fair that when bills come to us, as private bills, that we deal with them effectively and efficiently and not leave them in limbo for any period of time, so I would urge the committee adopt that order of business as set out in that motion.

Mr. Breithaupt: Mr. Chairman, I certainly will agree with that sequence. The one question I had was how much more is expected to be before us under Bill Pr13?

Mr. Chairman: There are 12 groups that wish to appear before us and I think the members have that list. If they do not, I have the original list dated June 15. Twelve groups wish to appear before us. The Toronto Real Estate Board is to conclude its presentation, but there are 11 new ones.

Mr. Breithaupt: I would hope that with the new groups—without offending anyone or suggesting that a full and lengthy presentation would not otherwise be welcomed—we would at least be able to encourage not just a repetition of lengthy material. I guess that will have to depend upon the firm and impartial guidance of the chairman at that point.

Mr. Chairman: Mr. Renwick, in response to your question we are up to 16 exhibits now and more than one of those are exhibits—written presentations or briefs—from groups yet to come in front of us. Is that not correct, Mr. Clerk?

3:40 p.m.

Clerk of the Committee: Yes.

Mr. Mitchell: Mr. Chairman, this committee has been adjusting schedules back and forth now for the last several weeks. Out of deference to the critic for the Liberal Party, who is ill, I stand to be corrected but it was my understanding we agreed that we would defer the Ministry of Community and Commercial Relations estimates until the fall.

If I remember correctly, I believe that this committee agreed to begin the estimates of the Solicitor General (Mr. G. W. Taylor) commencing next Wednesday in place of C and CR. As I say, we did that in deference to the critic for the Liberal Party, who is ill. I know we all hope that he recovers very quickly. However, I think we have played around with this schedule altogether too much.

It is not that we do not recognize the urgency of what the city of Toronto and others are

putting before us, but there are 12 other groups that wish to speak to us on the matter and we have a lot of material to digest. Quite honestly, I am not yet convinced at this point that I have all that information available, so I feel that we should adhere to the schedule we finally adopted last week.

Mr. Chairman: Thank you. Is there anything else to be said?

Mr. Breithaupt: The parliamentary assistant, Mr. Rotenberg, who would be charged with representing the ministry on these private bills, might have a view as to whether there was any approach that the ministry wanted to take to have this bill resolved before we left here, if possible.

It may be that they have no opinion one way or the other. I do not know that, of course, but if they did have an opinion that they preferred to have this bill attended to before we left here at the end of the spring session, then perhaps we should know that.

Mr. Mitchell: Summer session.

Mr. Renwick: Mr. Chairman, just one final comment.

All the private bills come here to us by petition from the public. I think we have an obligation to deal with them efficiently and promptly. If there has to be a priority, we should defer the estimates and give attention to the petitions which come.

I recognize the validity of the point made by the member for Kitchener with respect to the government's position on the city of Toronto bill, but we must remember that the city of Toronto comes to this assembly as a petitioner and should be placed in no different a position in connection with that bill than anyone else.

I am not asking that the bill be reported out in any particular form. That is not the purpose of it. I think we have an obligation to deal with the matter.

As I say with great respect to the chairman of the government caucus, Mr. Mitchell: if the proposal I put before us is accepted, the time which will be available this coming week—Wednesday, Thursday and Friday—will certainly provide everyone with every bit of information that anyone would ever require in order to make up one's mind on the matter.

I think we have an obligation to do that and I am not talking about how the votes will be counted when it is over. I just think it would be a shame if this bill were put over until the fall. It would be more than a discourtesy. It would be a

very definite indication that this assembly and this committee of the assembly does not know how to conduct its business in the interests of the public. It is just that simple and that clear.

If anyone speaking for the government on the committee here today wants to make a statement that the government is determined not to proceed with this bill, let us finalize it and strike it off our agenda, in which case an amendment can be put to the motion. We will at least know what the position is on the bill. I do not think we can keep delegations waiting until the fall to be heard on this bill.

Mr. Mitchell: I was merely going to respond that I think Hansard will clearly show that we supported the concerns raised by the Housing critic for the New Democratic Party in ensuring that every group that wanted to be heard was going to be heard. We supported that in every way, shape or form. In fact on one occasion we moved to sit for a longer period of time because a group was here.

We are trying to be very co-operative with the bill and we do recognize the concerns that the city of Toronto has, but surely we have to have some concerns and some recognition as well for the other things that have been scheduled. We have been bouncing things around. The present state we are in right now had been decided by this committee, at least to my recollection.

Mr. Chairman: Fine. Thank you, Mr. Mitchell. There being no one else wishing to speak to it, I guess we have a difference of opinion and therefore we better have a vote.

Motion negatived.

Mr. Chairman: That leaves us to carry on with the schedule the way we have it. Mr. Minister, we are now in the midst of—

Mr. Renwick: Just one point there. Representatives from the city of Toronto solicitor's office are here. Is it fair that they assume that this bill will not be called again prior to the summer recess or that, for practical purposes, it is put off sine die and that this committee will advise the city when it next takes up that bill?

I think it is important that we let them know what their position is. They have business to attend to as well as we.

Mr. Chairman: It is sine die, Mr. Renwick, with this exception. If the House carries on to July 23, this committee will be sitting and we certainly will have time.

We will be through the Solicitor General's estimates approximately by July 2, 3 or 4, and at that point we will have no business in front of us.

It has been agreed that the Consumer and Commercial Relations estimates are in the fall and therefore they would come on this—

Mr. Breithaupt: We do have the Attorney General's estimates referred to us, which presumably would follow along.

Mr. Chairman: No, the order is that the Attorney General's estimates would follow the C and CR estimates and those of the Solicitor General. They would not come ahead of C and CR.

Mr. Renwick: All I am asking is that you give a date before which this bill will not be called.

Mr. Chairman: I had in my mind from some time back we could not finish the Solicitor General's estimates before June 30, and we are now pushed along about two days because of other Justice Policy bills coming in the House at the same time.

Mr. Breithaupt: Then of course we would not likely sit on either the Thursday or the Friday, July 1 or 2.

Mr. Chairman: That is correct, and therefore it is likely to be July 7. I am relatively certain that the Solicitor General will go over to July 7—that is a Wednesday—with a decent chance of finishing them on July 7.

There is a relatively good chance that we would come ahead with Bill Pr13 on July 8 or 9—

3:50 p.m.

Mr. Renwick: At the earliest.

Mr. Chairman: —at the earliest. I cannot see it taking place before that time.

Mr. Breithaupt: Possibly more likely even on Wednesday, July 14.

Mr. Chairman: That is possible, providing the House is in session, because if the House is not in session then this committee is sitting on other matters.

Mr. Renwick: I agree with that.

Mr. Mitchell: I was just going to say that surely the member for Kitchener made a motion here today with regard to the estimates of the Provincial Secretariat for Justice and I think we could examine our time as we are proceeding.

I am not against it. I want to assure the member for Riverdale that we are anxious to deal with the people and to give them a date as accurately as possible.

Mr. Chairman: If you have some indication that we are going to perhaps be able to clear the Solicitor General's estimates within an earlier time frame—

Mr. Renwick: What earlier time frame would there be, Mr. Mitchell?

Mr. Mitchell: I am just saying that if this committee were to agree that the total allocation of time was not necessary—

Mr. Renwick: It will be necessary for the Solicitor General, I can assure you of that.

Mr. Breithaupt: I think the ministry ordinarily does take its 10 hours, but it is an idea.

Mr. Chairman: I have run through this again, gentlemen. There is a good chance that this could come on July 7, but that the 10 hours of the Solicitor General's estimates could not possibly come on before July 7. We are looking at July 7 or 8. We have only six hours a week maximum.

Shall we carry on?

Mr. Renwick: Miss Cameron, who is sitting in the room, is from the city solicitor's office, and I take it she can rest assured that she will be advised at the earliest possible moment by the clerk of the committee of the date on which this bill will be rescheduled after July 7.

Mr. Chairman: Correct. I see that is in consensus and agreement and understanding. Thank you.

Shall we recommence, at 3:57 p.m., with the estimates of the Justice Policy secretariat? We are in the midst of vote 1301, item 1, and we have two hours and 25 minutes remaining, or until we break tonight. Mr. Minister, where did we end up?

Mr. Renwick: Just on a point of order, if I may: my colleague, Mr. MacDonald, is with me today for a very specific reason of which you are well aware, his interest in the freedom of information bill.

I would ask that time be made available, both because we will not be sitting tomorrow and because Mr. MacDonald will not be here tomorrow, to deal with it. I have completed my remarks.

Mr. Chairman: We keep changing so much that I am a little confused as to where we broke, but I think it was at the point of the minister responding.

Hon. Mr. Sterling: Yes, I have not had an opportunity to respond to Mr. Elston, on your behalf, Mr. Breithaupt, or to Mr. Renwick's opening remarks. I am quite willing to wait to respond to those if that would be the preference of the committee.

Mr. MacDonald: I speak on the assumption that you are not going to respond for two hours.

Hon. Mr. Sterling: You never know. I might get carried away on these things.

Mr. Breithaupt: Only if he is provoked.

On vote 1301, justice policy program; item 1, justice policy:

Hon. Mr. Sterling: Mr. Elston asked the basic question of whether or not the secretariat was necessary or whether it was, in fact, a rubber stamp for the Ministry of the Attorney General.

I guess it is in some ways hard to justify in the open the role of the provincial secretariat and the cabinet committee of justice when that function, of course, is held as a cabinet committee. I can tell you only that of all the legislation and policies that are brought forward to the cabinet committee, in about 80 per cent of the cases some change is made to legislation or policy at that time. So there is probably more flexibility at that point for constructive change than at any other time during the whole process of putting policy either in legislation or some other form of implementation.

I really view my role of provincial secretary as constructively criticizing the policy proposals brought forward by the four other ministries.

I have also taken on another role. As I have mentioned in my opening remarks it is an attempt to either urge or push other ministers into developing policy in areas where there is an existing problem to be solved, or one that is going to be encountered in the near future.

Although I have a small staff working for the secretariat, they do brief me prior to every cabinet committee meeting for justice and we go over in some detail the legislation brought forward by any of the ministers. I do not know if, during the whole process, any other minister of government would have either the time or the inclination to put as much effort into a constructive critical role as I would have the opportunity to do.

In some cases, the amendments that have been made to the legislation have been rather minor. In other cases, some of the amendments have been major. I feel that even if the secretariat did nothing else than to fulfil that role, it would more than justify its existence because I believe we have made better law; we have changed a significant amount of law at that level.

The second question asked by Mr. Elston related to why we do not translate the English versions of publications into languages other than French.

Really, I do not have a good answer to that question. I have spoken to the communications

officer of the Attorney General, and to the secretariat about our own publications. It really is a question of resources and how much you can put towards that kind of activity.

As I also mentioned in my opening remarks, I am trying to pay more attention to the communication side, something which Mr. Renwick raised in his remarks. One of the things I have already done in this area which might be of interest to Mr. Elston is in relation to a guide we give to newcomers who come to our province and go to our newcomers' house down on University Avenue.

At my own initiation I have had a critique done of the chapter and the part relating to the rights and obligations of people coming to our province. I was not satisfied with the quality of the document and neither was the person who prepared the critique. I have given it to the Minister of Citizenship and Culture (Mr. McCaffrey) in the hope a better document will be available there. I am also going to pursue your suggestion, and I think it is a valid suggestion.

The third concern of Mr. Elston related to the amount of resources which the Attorney General had, and Mr. Elston drew a comparison to the Attorney General for British Columbia.

It is very difficult to make a strict comparison. The Attorney General for British Columbia is really the Attorney General, the Solicitor General and the Ministry of Correctional Services all rolled into one. Therefore, in trying to relate a four per cent figure to—I am not sure exactly what percentage you had calculated.

4 p.m.

Mr. Elston: I think it was four times.

Hon. Mr. Sterling: Four times as much—is not a very fair comparison.

However, your observation on the Justice area is somewhat valid and we are making some efforts to try to rectify that. I do not think the gap is as wide as it was, but I would have to acknowledge there are not enough resources in the Justice area.

Legal aid: the average annual growth rate over the past five years in the legal aid fund, or the amount of money being expended on legal aid, has been about 12.7 per cent per year. That is the annual growth rate. Government contribution has not increased by that much because part of the legal aid fund is derived from interest earned on lawyers' trust accounts. It is unfortunate that the public is not aware of that to a greater degree.

Some time ago in the mid 1970s, around 1973 or 1974, the Law Society of Upper Canada sought from the banks practising in Ontario an agreement whereby they would pay interest to the law foundation from the interest earned on lawyers' trust accounts in this province. As a result, the law foundation is now benefiting from the interest on those bank accounts to the tune of about \$11.6 million.

Mr. Brandt: What percentage of the total is that? You indicated the provincial percentage was growing at a slower rate.

Hon. Mr. Sterling: Last year the province's contribution was \$40.5 million; the \$11.6 million would be additional. I am not absolutely certain, Mr. Brandt, whether all of the \$11.6 million went to legal aid, but a good portion of that would have.

Mr. Brandt: Do you have that breakdown?

Hon. Mr. Sterling: Yes, about 75 per cent of the \$11.6 million went into the legal aid plan. The law foundation also funds other endeavours in research, library and historical kinds of things. We would like to help out in that area more, but as you know, it is like every other priority.

The secretariat developed policy on the issue of surrogate mothers. I read in a newspaper article on my trip back from Ottawa this afternoon that the immediate problem with surrogate mothers has resolved itself in an informal way. The particular contract has been withdrawn and the money has been returned to the persons seeking this arrangement.

The only law available now, that I am aware of, which prevents this activity going on is under the Child Welfare Act in the adoption area. It is not possible for a person to pay for anything other than the services surrounding the adoption—whatever court costs there would be, the legal costs, medical costs and that kind of thing.

If this contract were carried through in this province there would be a prosecution under that section when the adoption took place. It is probably an area we should look at in developing more and better law in the area and trying to face the issue head on. Quite frankly, it did not become high in the public profile until very recently.

As to the criticism from the bar, from both the bench and public, even though I am a member of the bar I am not sure whether or not that is a problem for which we in our own legal profession should seek a solution ourselves. It probably would be inappropriate for us to interfere as

a government. As you know, the law society is a self-regulating body.

I do not think all of the criticism is unfounded. I practised law for a while before getting involved in politics and I was quite often critical of some of my confrères. Things like the contribution to the legal aid fund should be something the law society should better advertise and they have to change some of their old attitudes. They have done a fair bit in the recent past and I hope they will do more in the future as well.

Since Mr. MacDonald will be talking about freedom of information and privacy I will postpone my response to questions you put to me in that area and try to tie them to these particular questions.

Mr. Renwick raised a number of questions. The first one related to the communication skills of the secretariat. I have already recognized an existing problem in our secretariat so it can better tell the Justice story. Because we do not have a communications person as such—we are probably the only ministry in all of government who does not have a communications person; maybe we have the most compelling reasons for a ministry to have one—I think we have done a tremendous job just on the initiative of the staff that is there.

As I mentioned in my opening remarks, the booklets we have produced have been received extremely well by the public. I would hope that by obtaining a person for the secretariat who has skills in the communication area, we would be able to not only utilize what we have, but expand it.

I also mentioned the problem in Ontario and Canada of finding out what has already been written, what has been produced and what is there. There is no central focus for someone to find out where they can get hold of material. I suspect we are reinventing the wheel on many occasions in the kinds of booklets we are writing or Alberta is writing, etc.

I mentioned we offered some financial assistance to the Canadian Bar Association to try to develop an inventory of the existing data. If we can obtain resources the secretariat might become a clearing house, if you want to call it that, for information about resource materials of interest to community groups and to all people involved with the justice system.

They might be able to go there and ask questions as to where they might obtain a film about a certain matter or a booklet about a certain matter or be able to talk to someone who has had experience in a justice program.

So there is a need for someone with communication skills. I have a request for funding for such a person before Management Board.

In its role of educating the public, has the secretariat considered an educational TV series on justice? Yes, we have. My deputy has been negotiating with the director of the Ontario Educational Communications Authority on the benefits to be derived from developing a series of films on the different aspects of the justice system.

4:10 p.m.

This kind of activity blends well into the educational thrust that I think the provincial secretariat must assume. I do not believe that booklets or pamphlets are adequate in today's society, and I would hope that we could use existing materials or programs that have already been developed.

I know that in Mr. Breithaupt's area, during justice week, there were a number of cable TV programs produced by that community. I have spoken to the young lawyer who was involved in producing those particular programs. I am very much interested in developing some kind of series in that area.

You asked about the evaluation of the Hamilton unified family court.

Mr. Renwick: We got it.

Hon. Mr. Sterling: I spoke to the Attorney General, as you might have gleaned from the legislative debate, about your request in that matter. I also understand that the provincial court, civil division, did an experimental project. There is evaluation being done on that matter as well, but I do not believe the report has been completed.

I believe that the Attorney General is aware of your concerns in that area. I think you brought that up in debate as well, did you not?

Mr. Renwick: Yes, assuming he was listening.

Hon. Mr. Sterling: I was listening, Mr. Renwick. Has consideration been given to the development of the child abuse evidence kit? I think you brought this up in prior estimates as well.

Mr. Renwick: Yes.

Hon. Mr. Sterling: I think you brought it up either last year or the year before. I had asked my deputy about this matter prior to these estimates coming on. We were a little confused with your question. Were you relating to sexual assault on children or were you talking about child abuse in general?

Mr. Renwick: In general.

Hon. Mr. Sterling: Perhaps you might have a discussion with either myself or my deputy about this. We are not exactly sure. If you have some good ideas about how one might develop a kit in this area, we would be certainly glad to talk to you about it.

By talking to some of the medical and children's aid people I think we could develop something in this area. If you have some specific ideas as to what might be included in this that would aid the situation, I would like to hear them.

In the sexual assault area we have looked at changing the existing kit to allow an offshoot kit to be used for that kind of collection of evidence, but I do not know just what we could do in that area of general evidence about bruises, wounds, scars, scratches and that kind of thing. I would be interested to hear your ideas on it.

What is being done to address the situation when people are held in jail for a long time and then found not guilty? Will a policy of compensation in such cases be developed? I think you have asked the Attorney General questions in the House regarding this on several occasions.

I think it relates to a larger area of victim justice, victim-witness justice, or whatever. It is my intention, during the summer season when the cabinet committee on justice has an opportunity to meet for a longer period, to bring up this issue and see if we can develop some policies in this area.

As you know, there have been some law reform commission reports in relation to various parts of victim-accused justice, as it is known. The Ontario Law Reform Commission in 1973 and a British Columbia Law Reform Commission report of 1974 both undertook studies in these areas. There has been no legislation following or surrounding those recommendations. There is some existing legislation in England, in New Zealand and in New South Wales.

In all the cases I am aware of it is a two-edged sword. Not only is there provision for compensation, but there is also provision for the judge to award damages against an accused when found guilty. In the case of someone who has held up the court proceedings and has a very frivolous defence, the judge is given some latitude to award costs against the accused.

That is an interesting concept. The area where difficulty has been encountered in this kind of a law is in drawing the parameters or variables to be considered by the judge in making his award.

Also, as you know, although in our present system there are some provisions in the Criminal Code for restitution, it is hard to change the system so the people working the system put it in place. Although this legislation is in existence in England, New Zealand and New South Wales I understand that it is not used extensively.

It is an area on which we can draw some conclusions. As I mentioned before, in my role as a provincial secretary I am going to try to nudge some of the other ministers into some commitments in that area.

I know you are also aware of the task force on victims, which my deputy is heading up; it will be reporting in March 1983.

What can be done about the collection of unpaid fines? Should the Ministry of Revenue assume the responsibility? There are a lot of unpaid fines. In fact, I am told the amount of them, in 1981-82, is about \$56.8 million. It is a substantial figure and one that increases as we go on.

One area where we are going to be able to improve the situation is when the plate-to-plate system comes into effect. It will help municipalities in collecting fines for things like parking violations. I understand that this amounts to about \$12 million of the total amount I mentioned before.

I do not think we have developed a policy in relation to collecting the other amount, whether we would be willing to use the plate-to-plate system to collect other kinds of fines as well. I do not think we have addressed that, but it is something I think we should address.

4:20 p.m.

As to whether or not the Ministry of Revenue would do a better job at it, I am not sure. They would basically have the same tools to collect it; whether they would be more efficient at it I do not know.

As you know, when the Ministry of Revenue is trying to recover tax it basically does a management study on how much it is costing to collect as opposed to what is collected. In other words, they do not waste their money going after tax where they are going to expend more in recovery than they are going to recover.

I do not perhaps understand the member's reason for transferring it over to the Ministry of Revenue. I guess I would ask him to expand on that area—why he would think that it would be better management to do it that way.

Ottawa has been informed of Ontario's objection to the American bounty hunters coming across the border. I understand that the Attor-

ney General, as chief crown law officer, has started extradition proceedings against these people under the auspices of the External Affairs department.

There is a policy being developed with regard to the address of criminals profiting from the business of crime. The member introduced a private member's bill in the House, which I have already indicated to him is receiving some attention from the policy field at this time. I hope to pursue that in the not too far distant future to find out what can be done, in any sense.

Will it be necessary to have a redefinition of truancy as a result of the Young Offenders Act? Quite frankly it is going to be necessary for us to make some significant policy decisions in relation to the Young Offenders Act, not only in the truancy area, but also with regard to all provincial offences.

There has not been a decision by our government as to how we treat 16- and 17-year-olds who, for instance, drink and drive. Under the existing law at this time, even under the Young Offenders Act, they would still be treated in an adult court. I doubt if that will remain the same, but that policy also has not been addressed at this time and is going to have to be addressed in the not too far distant future.

The Young Offenders Act, as you may or may not be aware, does not kick into effect until April 1, 1985. So that leaves us a period in which to amend some of our laws and bring them around. In fact, I spoke to a Senate committee in Ottawa this morning on this act and I might mention as a side remark that we are very much concerned about the expenses that are going to be incurred by our province as a result of this legislation really being foisted upon us.

In February of this year the Solicitor General for Canada, after 10 years of consultation on this matter—the idea of reforming the Juvenile Delinquency Act has been around for a very long time—made some changes. Up to that time there had been a section in the act to allow each province to pick the maximum age at which a person would come under the Young Offenders Act—the age that might be applicable in each province. Under our existing law the age is, of course, 16 in Ontario.

In early February the Solicitor General brought in two significant amendments. First, he imposed the age of 18 on us. Second, he imposed a secure and open custody concept in terms of a judge giving a disposition of a case under the Young Offenders Act. By doing both of those things

there is a tremendous financial impact on this province, both in operational costs and in capital costs, in order to build, really, a whole new system of corrections for the older juvenile.

We estimate that the cost of operation is going to range somewhere between \$90 million and \$150 million a year, which is just astronomical, and somewhere around \$150 million in capital costs. It will be necessary to build several new holding institutions across the province in order to hold the older juveniles, as we will not be able to put the 13- or 14-year-old in with the 16- or 17-year-old, because of the existing situation.

I brought to that committee's attention a situation which exists in my riding; in the town of Prescott, which is on the north shore of the St. Lawrence River, a small town of 5,000 people. When they have a juvenile who has to be held in detention, they must take that young offender down to Kingston, at a cost of about \$200 a trip. If we do the same thing for 16- and 17-year-olds it is going to increase their costs dramatically, because they now can take a 16- or 17-year-old to Brockville, which is only 10 miles away, as opposed to 90 miles for the Kingston trip.

So there are tremendous problems, not only with our finances but with small police forces, smaller municipalities that will not have the range of detention facilities necessary for these young-old juveniles. We are really going to have a two-tier juvenile system. We will have one tier for the young and one for the older juvenile.

While we do not argue with the thrust of the idea of the 16 and 17-year-olds receiving this better treatment, we question whether or not the social benefit achieved by spending these amounts of dollars is really justified in these economic times, and we feel that the money could be better spent probably in our younger age groups, either in our schools or in our children's aid societies, or on our young mentally ill people and those in the handicapped area. So we are very much concerned about it and the Solicitor General really has not given us any indication of any significant increase in financial assistance to meet what they have imposed upon us in this area.

On the truancy part specifically, I know the Ministry of Education is looking into that matter. The probable answer will be that it will be dealt with as a child welfare application is dealt with at this time. There will be a hearing and then there will be some kind of disposition resulting from that hearing. It would not be like a charge under the present situation.

That is the general feeling at this moment. I cannot speak of that as government policy, but they are coming to a conclusion on the truancy matter very quickly and will be looking at those other matters in the near future.

4:30 p.m.

In relation to the freedom of information proposal in the Public Service Act oath, the oath will have to be amended to come into tune with any kind of access to information law. We understand that would take place at the same time as the access to information law is brought forward. It would be reasonable in terms of the changes in that area.

From that response, is there anything further you wanted to raise?

Mr. Renwick: I just have two very brief comments in the light of your comments. I do not pretend for a moment I have given any deep thought to the child abuse kit question for evidence purposes, but if you or your deputy or a member of your staff got in touch with me in August I would certainly be glad to kick around what rudimentary ideas I have on the matter.

Hon. Mr. Sterling: We would appreciate that.

Mr. Renwick: If it made sense to ask informally someone from the children's aid society and perhaps someone from the medical field to sit in with us, we could at least kick it around.

I do not underestimate the problems, but it does seem to me that on many occasions a large number of children who have been abused at some point find their way through the hospital system, for whatever reasons, or the justice system or children's aid come in contact with the matter in one way or another. It seems to me it would be possible to have at least some child abuse alert system, which I think now is pretty much left to the person who is in contact with the evidence of it.

I know that unless it is done through professional people, like the police or children's aid or others, then private citizens are extremely reluctant to get individually involved with allegations against people about whether or not their children are being treated properly.

I would like to do that. Perhaps some time in August we could usefully talk about it for an hour or two.

Hon. Mr. Sterling: Good. I would appreciate that.

Mr. Renwick: The other point, the question of victims of justice, I am treating very gingerly because of the immense number of problems involved in it. I think the problems are sufficiently

extensive that I have been simply trying to deal with what to me, at least, are evident cases of specific injustices.

Those two cases I spoke of should not have to await some final assessment of whether there is a possibility of putting in a full-blown scheme. At the moment I am quite content to leave it on the basis that it should be an entirely discretionary matter.

One does not want to use that terrible phrase, *ex gratia* payment, because in the legal system you tend to create precedents, whether you think you are creating them or not, in areas like that. I do not think we can avoid the specific instances of injustice on the one hand on a discretionary basis, and get on with it and be prepared to admit that yes, payments are required, and at the same time look into the extremely difficult questions.

I happen to be black and white on the question. I just shudder at the thought that under our system an acquittal is not equivalent in common parlance to innocence. I also do not want to talk about gradations of innocence. I am just not interested in that kind of approach to it.

That does not mean it should not be studied. As a matter of fact, today Donald MacDonald and I met with our colleague Marion Bryden, who is most anxious to place a proper resolution on the Order Paper related to this question, to discuss some procedural suggestions as to how it should be done. I think she asked us if we would talk with her about it and we did.

I would suspect that before the session rises a resolution will go on the Order Paper. There are some very real questions. My concern is that if we wait until all of the problems are ironed out, the evident cases of what to me are victims of the justice system—I do not think we can have a justice system without someone being a victim somewhere along the line because of the complexity of the problems—Rather than addressing the victim-of-crime question, which is a different question, I think I would like to see the Attorney General have enough confidence in the system to say, "Look, whether anybody made a mistake or whether the system was inefficient or whatever the problems and the complexities of the case, the net effect was that X number of dollars should be paid to so and so."

I think of the Cole case. Someone can spend three and one half years in prison, as in the case of Derrick Cole, and in the case of Clifton Stewart 500 days in jail, and we just shrug and

say, "Well, that is the luck of the game." It seems to me to be a very serious problem.

I have not specifically mentioned it before in question period because I did not want what I was talking about to be misunderstood, but it happens that in each of those cases, each of those persons is a Jamaican Canadian, landed immigrants who are citizens of this country who came to this country from Jamaica. I think it raises very real questions about whether or not there are racial distinctions and whether there are class distinctions in the way in which people are treated under our system.

Again, all I am saying is steps have to be taken in the initial instance almost on an individual basis and a clear rationale enunciated about the individual case as to why that is going to be done. We have to begin to say, "Yes, we can rationalize the system, but we are not going to wait until the full system is in place."

I certainly also think it is not just a legal question. It is also a question which, with the best advice in the world from the point of view of the legal problems involved, requires some exercise of judgement by people who are elected members of this assembly on the nature and extent of the problem and whether in the long run it is solvable in principle by some method. There has certainly been ample background work, but that does not preclude another good look at it.

I think ultimately this assembly should face up to the question through a committee on the information that is available and say, "Yes, it is feasible," or, "No, it is not feasible," and put out the reasons for it and answer the problem. As this society becomes more and more complex, more and more occasions are likely to come up where there is something called injustice wrought by the justice system. That is what we have to pay attention to.

Mr. Breithaupt: Before Mr. MacDonald goes into the freedom of information theme, may I just make a few comments on the same topic Mr. Renwick has been discussing?

4:40 p.m.

Mr. Chairman: Your thoughts and mine are the same. I was going to inquire, as soon as Mr. Renwick was done, if anyone else had any questions on any area and topic other than the freedom of information so we could get those out of the way and let Mr. MacDonald run. Getting them ahead of Mr. MacDonald would put things in good order, providing you do not take too long. Leave him some time.

Mr. Renwick: I do not have any other comments myself.

Mr. Breithaupt: This was the only other theme I really wanted to speak to so I thought it might work out quite well.

In the comments made by Mr. Renwick, the member for Riverdale, this afternoon, I just wanted to associate myself with this theme of compensation which is before us as a result of recent events, particularly the Susan Nelles matter.

Two other themes come to mind. I recall the results which now may well be appealed and dealt with otherwise, concerning the three justices of the peace, Messrs. Howard Wax, Robert Hurtle and Herbert Spong. The results of the certain charges made, charges which have either been withdrawn or not proven, or stayed because of the passage of time, and the financial results because their salaries were stopped during those events, have been most severe on those three persons.

Recently several judges, particularly in the Windsor area, have also come into difficulties. In those instances, I believe salaries were continued, but whether or not there was misconduct, whether or not there are serious charges resulting from what has happened is something that may also arise in the form of some kind of compensation.

We looked recently at an article in the paper just last week with respect to Donald Marshall, a young man in Halifax who spent 10 years in prison for the murder of a friend. Apparently the witnesses have recanted. They have said they did not see what they said they saw. There are questions about the police investigation which apparently turned away others who had come forward because the case was closed. All these difficulties have made this theme of redress a most current one.

I have been interested not only in the recent editorial and other news comments, but in the points raised in the House as to how we would use the Nelles case to open up this area. It has not been as important or as commonly interesting an area as many others have been.

I recognize the old legal maxim that a hard case makes bad law. We have to be mindful of other events that flow from a decision to have compensation formally available and broadly based. It may be these specific cases are worthy of much greater involvement because of the peculiar circumstances and because of the wide public interest that has developed from the

unfortunate events at the Hospital for Sick Children.

I will not go into this at length, but I would be interested in hearing from the secretariat what areas are being considered. We know of the British situation with their legislation, entitled the Costs and Criminal Cases Act of 1973, the details and the general framework. I do not want to review that other than to recognize they have come up with a way of going some distance in trying to resolve the circumstances.

It is most peculiar that when you look back at the report in 1973 from the committee for the compensation of the innocent, it is most curious that two of the people who happened to be on that group were the present Attorney General, Mr. McMurtry, and Judge David Vanek, who presided over this Nelles case. As the member for York South (Mr. MacDonald) would say, it is passing strange that of all the people who might have been involved in considering this point almost 10 years ago there are two gentlemen who are involved and have gone on to particular responsibilities, indeed most important responsibilities, in that very situation.

I was concerned about the reports dealing with how that committee report has simply waited around. Certainly there are other avenues open to persons in these circumstances with respect to civil cases. It would seem the times are appropriate now to consider the whole theme of legislation and compensation.

I do not know, for example, that it is necessarily the function of the Attorney General to do this. Presumably it will be a very important part of the work of the provincial secretariat because not only is the Attorney General involved, but all of the areas of the administration of justice are involved. You would be dealing from your overview and from the policy circumstance with the co-ordination function that, hopefully, is what this ministry is all about.

So I would like to hear briefly, as you respond to my colleague from Riverdale, how you see this circumstance unfolding. What you are doing with respect to the British experience? Are there other jurisdictions that you are particularly looking at? Is the secretariat going to be co-ordinating some pretty prompt studies to pull together the state of the art?

Just what can we expect in the next several months so the public will have some idea as to the themes, as well as the possible approach the government may take, not only in these particular cases but in the general case that will deal

with matters not yet having received the publicity these particular cases have?

Hon. Mr. Sterling: By pointing out those other cases, Mr. Briethaupt, you have probably pointed out the real problem that you cannot enter into this field without having some kind of guidelines to go around.

When I was practising some criminal law and I have read about these particular individuals, I would say every person who I represented who had been accused of a crime, or whatever, and was acquitted—and there were a few of them—were not compensated for the lost time. They had to be away from their jobs; there was the social cost in terms of family—

4:50 p.m.

Mr. Breithaupt: Their reputations.

Hon. Mr. Sterling: —and, in particular, the family; the person's community; the emotional drain on a person who goes through a trial. If you go through a trial with various people, you realize what a traumatic event this is in their lives when they have not been through something like it before.

I know what Mr. Renwick is saying. You cannot wait forever when you are seeing justice being done, but you have to have an even hand as well in dealing with the problems. I cannot speak with the same kind of ability he has because he has much more knowledge about those two cases than I have.

Regarding cases like that of Miss Nelles, I guess I have some problem with her case as to whether or not she applied for legal aid. It was someone's choice that her legal costs be paid by, I believe, her father.

Legal aid does not ask you whether you are a 25-year-old person and charged with murder, a serious offence or any offence. It does not ask you whether or not you have a father who can pay for your legal costs.

There was a definite choice made, at that point in Miss Nelles' case, that she was not going to seek legal aid. If that was the case, then to develop another system of compensation for her, are you encouraging people to skirt around the whole legal aid system?

Mr. Breithaupt: That is why I was careful to say that a hard case might make that law. This is the difficulty we all face.

Hon. Mr. Sterling: And this is the difficulty that you face in discretionary areas.

Of course, you are well aware, Mr. Breithaupt, of the Federal-Provincial Task Force on Victims of Crime, which is being headed up by Mr.

Sinclair. We were hoping to have the luxury of having a look at their report. Compensation, I understand, is one of the issues being dealt with by that committee.

Be that as it may, I had hoped to try to lay out some kind of blueprint for the ministers in my policy field, to consider making some kinds of decisions this summer, if it is at all possible to do that. I know that in the last four years it has not been done by the justice committee on which I sat. We have talked about victim justice, but my next step is basically to try to develop some kind of blueprint to identify the issues involved and see where we can go in a practical sense.

In terms of the conference on crime and redress which we attended, I guess the most disappointing part of it was that there was no solid suggestion at the end as to how you would put some of this theory into practice to apply some measure of more justice in our existing system.

That is basically my challenge in the next few months: to try to get something considered by the cabinet committee on justice, to see if we can "tinker" with the system and at least get some more measure of justice so we do not have to wait until the report of the task force on victims of crime.

Mr. Breithaupt: Indeed, hopefully to end my comments on this before 5 p.m., since you now know the individuals from the Criminal Lawyers' Association who are particularly interested, and others who have commented, it may be worth while that a modest symposium or conference, perhaps in early September, would be a day or two well spent.

Clearly, we members of the justice committee and persons such as Arthur Maloney who have put their minds to this theme might well come together. We might take the report on the updating of that committee, of which Dohn Batchelor was the chairman, as well as having someone who could speak on the British experience or otherwise, with the hopes of pulling it all together. There might at least be 10 or a dozen points or themes agreed upon as a framework which could benefit us all.

That might be an idea which could receive very general interest. I am quite certain it would receive much media attention, hopefully in a way that would show the concerns everyone has that the proper thing be done, but also to point out quite clearly the difficulties and balancing which have to be considered.

It is very easy to say, "Yes, just do that, or do this," and not look at the politicians' unfortu-

nate approach at times, which is that, on the other hand, we have to think of certain other things. It might be an opportunity that we could use to some good public purpose.

Hon. Mr. Sterling: I think it is an excellent idea. At my stage of developing this area I have not quite reached a decision as to whether or not my function would be useful, in a real sense, in doing something at this point. I must admit it is a thought I have already had, and I have actually consulted with some of the kinds of people you have mentioned, in trying to develop some kind of skeleton that might be of use.

I am not sure, when you get a great number of people in a room, whether or not you get a great deal of productive work done in trying to achieve a goal. It is important that at this stage of our history—I think everyone agrees on the principle—you have to seek a hard solution.

I am not interested in having that kind of thing unless you have something to present or talk about, an idea to flesh out at that point in time.

Mr. Breithaupt: You might well prefer to have a series of suggestions in hand to go to the group with, rather than expect it to come the other way, and that is of course quite reasonable.

Hon. Mr. Sterling: I think you have to have a skeleton of an idea before you can get some meaningful input, if you really want to do something. If you do not want to do anything, you just hold a conference; you can talk, and you come up with the same kind of resolution as we did in Vancouver.

Mr. Breithaupt: Yet one might suggest that the skeleton, even from seeing how the British legislation has developed over some years, is perhaps not too difficult a thing to have, at least as a formative base on which to have a symposium of some sort.

Hon. Mr. Sterling: Yes. I would also be very much interested in this committee making very significant inroads into it too, because I think this deals not only with the legal profession and with lawyers but with people who really understand what is happening outside as well.

Mr. MacDonald: Mr. Chairman, Mr. Breithaupt's private member's bill on freedom of information and individual privacy provided us, for the first time in a long while, with an opportunity to review the whole issue on freedom of information. However, for those of us who did not have the 20 minutes to lead off and

had only 10 minutes to speak it was painfully inadequate.

5 p.m.

Hon. Mr. Sterling: I must say, Mr. MacDonald, and I hate to interrupt, but you at least had 10 minutes to speak. When you talk about freedom of information, some members, perhaps your party, might also remember there is supposed to be freedom of speech in debate in the Legislature and I would have appreciated 10 minutes.

Mr. MacDonald: I am not sure that I grasp the import of that interjection, but I will skip it and get on so we will not be wasting time.

In fact we in Ontario have been debating and studying this issue now for a period of eight years, either in the royal commission arena or in one or other of the ministries. If I may say so rather bluntly, Mr. Minister, I find your argument that they have been considering it in other jurisdictions since 1968 or 1972, or whatever, rather unpersuasive. I think if you have studied it for eight years presumably you should be able to come to some sort of a conclusion.

I think it is interesting to put it in the context of this country at the moment.

Three provinces have freedom of information bills, namely New Brunswick, Nova Scotia and Newfoundland.

My last information is Quebec is at the committee stage with its bill; presumably very shortly it is going to have legislation.

The Attorney General in the new government of Manitoba says they will have a bill by the end of this year.

British Columbia has indicated its intent to move and grapple with the issue.

Prince Edward Island is studying it. I do not know what its intent is.

In Saskatchewan the Attorney General of the late and much lamented government established a study with the Chief Justice, Mr. Culliton, who will be reporting shortly and what the new government will do with it I do not know. So everybody is moving towards some sort of a conclusion.

I think it is interesting, just to pause for a moment, that the only province which is not considering it is Alberta where, and I quote from Premier Lougheed, "There is no need for provincial freedom of information legislation, since freedom of information is a matter of course in Alberta."

Lougheed said he "does not believe such an act will be passed at the legislative session due to

begin next month"—this was a summary of the last year. He said, "Such a bill would imply the government is hiding something." That is the whole point. Traditionally governments have hidden something, because that is part of their whole approach in the secrecy around cabinet and various other traditions of the British parliamentary system.

I think it would be useful to take about five or six or seven minutes to review what has happened in Ontario on this issue. Private members' bills were introduced in 1974 and 1975 by myself and in 1976 by Patrick Lawlor when I was away down in the ballot for that year and therefore did not have a chance. He was second on the list and so introduced the bill because of his own personal keen interest as well as that of all of our caucus.

It is interesting to recall that spokesmen for all parties indicated support in principle. That would seem to suggest the stage had been set for action, but in April 1976, in a CFTO broadcast, the Premier (Mr. Davis) indicated that he did not think that freedom of information was needed, the problem with the public was that they had a surfeit of information now beyond their capacity to absorb, and obviously at his level there was no interest in proceeding.

However, the dynamic within all parties, including the Conservative Party, sometimes is very interesting to watch, because a few weeks after that there was an annual meeting of the party. Bill Neville, who was around here and subsequently went to Ottawa, produced a paper at one of the workshops in which he called very vigorously for freedom of information and even for funding of public interest groups in advance of coming to a decision on policy.

The Globe and Mail came out the next day with a headline that there was a grass-roots revolt in the Tory party with regard to freedom of information. The Premier began to pause and give it some second thoughts, and obviously the matter was going to be more actively considered.

That fall in 1976 a group of young Tories—for which Frank Vasilkioti, the Conservative candidate in St. George in the 1977 election, acted as spokesman—actually produced a bill. It was released at a press conference. I know that that bill was passed into the Attorney General's department.

My information is, and I have no reason to believe that it is not accurate, that the Attorney General's department produced a draft bill that was taken to the cabinet, but because there

were such serious reservations from the Premier down, undoubtedly including the AG, they opted for the traditional way of dealing with a hot potato, particularly on the eve of an election, and they established a royal commission.

So the royal commission studied it for three years or more, concluded its study in the spring of 1980 and the report was made in September 1980. The minister then charged with the responsibility of carrying this issue forward, Alan Pope, was obviously enthusiastic and gave what everyone assumed was a rather firm commitment that before Christmas there would be some action. Unfortunately he did not say which year. That was Christmas 1980; we are now heading towards Christmas 1982 and we have yet to see the bill.

I think it is useful, Mr. Minister, just to review the painful succession of excuses that have been used as to why this matter must be studied still further. If we go back to the Attorney General's explanation in the House prior to setting up the royal commission in 1976, his reason for wanting to set up a royal commission and explore the topic very thoroughly was that they wanted to assure themselves that freedom of information would not undermine our system of government, the British parliamentary system of government. More specifically, they wanted to assure themselves that freedom of information would not undermine ministerial responsibility and thereby undermine our system, because ministerial responsibility has been one of the basic tenets of it.

As we all know, the commission did a very thorough study, not only of the issue but in many of its research papers, of which there are some 17, in what, if I may just digress for a moment, I think is the most comprehensive and detailed and sophisticated analysis of this topic, not only in terms of Canadian experience but all across the world.

Hon. Mr. Sterling: There was one paper on ministerial responsibility.

Mr. MacDonald: Right. One document, produced by Kenneth Kernahan, and I want to read one paragraph in it:

"It is a serious error, however, to exaggerate the impact of more open government on the doctrines of ministerial responsibility and political neutrality. The gradual evolution of these doctrines that has already occurred has been explained earlier in this paper. The implementation of effective freedom of information legislation would require further evolution of these

doctrines. It would not require their drastic alteration or their abandonment."

In short, he came to the conclusion that, on the argument that it would be a threat to our system of government by undermining ministerial responsibility, it might lead to some evolution of the theory of ministerial responsibility, which many people think is a valid proposition, but it was not going to undermine it.

So that excuse went by the board and it did not seem to—

Hon. Mr. Sterling: That is if you accept his conclusion.

Mr. MacDonald: Yes, well, the commission accepted it.

Hon. Mr. Sterling: The commissioners are not politicians either.

Mr. MacDonald: The next excuse was advanced after the report of the royal commission had come down. The Attorney General became very preoccupied with the threat that freedom of information might constitute for effective law enforcement. There were repeated references to what has happened in the United States, with the suggestion that there it was having a serious impact.

That has been looked at, for example, in the Canadian Bar Association study. I will quote a couple of paragraphs from the news account that came out on April 27 of this year in that connection.

"It cites recent US news reports, quoting from an internal FBI document on the impact of US freedom of information legislation. The 2,000-page, 19-month study, ironically obtained through freedom of information request, shows that there is little significant erosion of the FBI's ability to acquire information. During that period, about 7,000 FBI agents documented only 19 cases of informants refusing to provide information because of their concerns about the act."

5:10 p.m.

Hon. Mr. Sterling: Why did the Assistant Attorney General for the United States tell me that their information sources had dried up by 25 per cent?

Mr. MacDonald: I do not know, but there is the study that Murray Rankin came from. You provoke me into something I was going to say later. Alan Pope was enthusiastic about this. If Alan Pope was still in charge of it, I think we would have the bill. I suppose that is a little presumptuous on my part because I do not know what the cabinet would do when it got to them, but at least it would have got to the

cabinet and I think it would have been the right kind of bill.

The impression abroad is that your function has been to seek out in Washington, in New Brunswick, wherever you could, every conceivable excuse for delaying and worrying about freedom of information and to continue to study it, to study it to death. In fact, I attended a conference last September in Charlottetown. One of the top bureaucrats in New Brunswick happened to be at that conference. He told me you had visited him and that when you came in to visit him and to inquire of him how the freedom of information bill had gone, your nose was out of joint from the word go because you found on his desk a copy of the article I had done from the *Globe and Mail*, which was rather a critical analysis of what I described as "calculated procrastination."

That was his impression and he reported it to me. He was likely a good Tory—at least he was in a Tory government, a Tory bureaucrat—but maybe he was a pure civil servant and was neutral.

Mr. McLean: He was probably one they never got rid of.

Hon. Mr. Sterling: And he said my nose was out of joint?

Mr. MacDonald: Yes. He felt you were discomfited to think that he should be influenced by this rather poisonous assessment of the situation in Ontario which I had done for the *Globe and Mail*.

Hon. Mr. Sterling: I cannot recall seeing the article on his desk, quite frankly. Mr. Dombek was with me all the time. I do not think we were in his office, to tell you the truth. We met in the conference area.

Mr. MacDonald: I do not want to pursue this in detail. I am reporting what he told me.

Hon. Mr. Sterling: We had a great time.

Mr. MacDonald: It was unsolicited. He told me the impression was that you were looking for flaws in the system, you were looking for the weaknesses. That is fine so far. If your thrust is you are going to get a bill, then you are going to get it through in fulfilment, for example, of the royal commission recommendations.

Hon. Mr. Sterling: I intend to get a bill through.

Mr. MacDonald: I will come to that. I have profound misgivings with the bill you are going to bring in, and that is really the whole point of this exercise this afternoon.

Mr. Renwick: May I ask him one question? Is it true that you had difficulty extracting the material from your colleague Mr. Pope?

Hon. Mr. Sterling: No.

Mr. Renwick: That was the story I heard.

Mr. MacDonald: There are an awful lot of stories, and I think your approach to the issue has provoked the stories. Perhaps they are getting embroidered along the way.

Let me move on. There is a third reason that came up, and that was Mr. McMurtry's letter to all the attorneys general and to the federal government with the proposition that perhaps we should attempt to get a bill that everybody across this country would be happy with; it would all be co-ordinated and tied in with it. After the exercise we have gone through on the Constitution, that certainly invited a decade of further study, and it was fairly universally turned down across the board.

However, it provoked a study by the Canadian Bar Association. I know you have criticisms of the Canadian Bar Association on occasion and some of the fellows.

Hon. Mr. Sterling: When did I criticize them?

Mr. MacDonald: You said you were critical of your fellow members of the bar a few moments ago.

Hon. Mr. Sterling: My fellow members of the bar? That is not the association. I am a member of the Canadian Bar Association, as a matter of fact.

Mr. MacDonald: The association is the organization speaking on behalf of your fellow members, so let us not split a hair down the middle.

Mr. Chairman: I must correct you on that. You are off base on that one.

Mr. MacDonald: Not being a member of that elite group, I will not get into this fractious argument.

Mr. Chairman: It is too expensive for me to belong to now also, Mr. MacDonald.

Mr. MacDonald: Let me give you a few quotations from Mr. Fraser, the Canadian Bar Association president: "There is no compelling reason to delay legislation further. We presume to say that these objections have all been answered or, if not answered, at least understood. It is time now to move forward."

Mr. Fraser says as a final coup, "If one rejects judicial review," and I am going to get to that in

a moment, "then freedom of information becomes a eunuch guarding the government's harem."

Hon. Mr. Sterling: You like that one?

Mr. MacDonald: Yes, I like that one. I think it is rather colourful and it comes to the point.

Mr. Brandt: It has a nice ring to it.

Mr. MacDonald: The minister came up with a new excuse in this relentless succession of excuses. A few weeks ago he said he was not certain whether he was going to proceed, and I will get to some more of his quotes in just a moment. His reason was that there was nobody really interested in this. Other than a few editorial writers, a few reporters, a few lawyers and a few people on the opposition side, there was no interest at all in this kind of a thing.

Hon. Mr. Sterling: No. There is a lot of interest in the privacy area.

Mr. MacDonald: I am talking about the freedom of information area.

Hon. Mr. Sterling: You cannot talk about one without the other.

Mr. MacDonald: They are opposite sides of the same coin, I grant you, but there is a lot of interest in the freedom of information issue. Mr. Breithaupt was able to be exposed to just how spontaneous and widespread that interest was.

When it looked as though there was going to be a stall and the bill would die in Ottawa, the access organization gathered their forces together again and had a press conference at which they claimed they were speaking for 4 million people, the membership of their organizations, which was an interesting kind of calculation. Significantly, within hours, the Prime Minister of the country reversed his position and said he would proceed with the bill under certain limitations of debating time and things of that nature.

The same thing happened here in Ontario. With the prospect of a debate and the opportunity to review this issue once again with the Breithaupt bill, the group in Ontario, which is in effect a provincial committee of the national access organization, came together. It is a group that is loosely knit but represents and speaks for some 20 different groups.

They are groups such as the Canadian Association of University Teachers, the Canadian Bar Association, the Canadian Civil Liberties Association, the Canadian Environmental Law Association and the Canadian Federation of Independent Business. The minister might be interested to know that since that meeting the

Canadian Manufacturers' Association has joined it.

Hon. Mr. Sterling: Did you talk to them about it?

Mr. MacDonald: Did who talk to whom?

Hon. Mr. Sterling: The independent businessmen and the CMA?

Mr. MacDonald: Yes.

Hon. Mr. Sterling: I did too. They are not too supportive, I will tell you.

Mr. MacDonald: Of what?

Hon. Mr. Sterling: Freedom of information, as you see it.

Mr. MacDonald: That is not the information I have because they supported the statement that was produced by the Ontario Access committee and the CFIB.

However, the most interesting thing is there are a number of individuals in addition to this group organization, some of whom you would expect because they have been in the battle since day one, people like Pierre Berton, June Caldwell and Peter C. Newman, who has joined it since the actual meeting we had two or three weeks ago.

Among those groups of individuals is Dr. D. Carlton Williams, the former chairman of the royal commission, and J. D. McCamus, now dean of Osgoode and director of research for the royal commission. They also feel the issue, as it was expounded in the royal commission report, is the appropriate approach to freedom of information and not some of the variations you have come up with.

Hon. Mr. Sterling: I would presume they would support the position put forward in the report.

5:20 p.m.

Mr. MacDonald: So would I. I think it is rather interesting they are willing to identify with that great body of people out there who have now expressed an interest in it and rather pulled the rug out from under your argument that there was really no interest in this. Therefore, whether or not you should proceed with it was a matter that was disturbing you greatly.

However, I want to go back to that famous speech of yours in Belleville. I know you have given a number of explanations with regard to the key paragraph, but let me put that key paragraph on the record again, from page 8 of the mimeographed version of your speech:

"The specific review structure which I favour depends heavily on the principles and practices

espoused by Dr. Williams. However, its underlying rationale, its pervasive informing principle, is that of ministerial accountability."

That, sir, is not an accurate reflection of the report.

Hon. Mr. Sterling: I think you have to read the sentences before and after, do you not?

Mr. MacDonald: I do not want to get off into an extended—

Hon. Mr. Sterling: I do not want to be misquoted.

Mr. Breithaupt: Let us try having the sentences before and after, to see how the whole thing goes.

Mr. MacDonald: Okay, the paragraph before says: "To quote Ontario Chief Justice Howland, 'Judges must keep themselves aloof from politics and have no right to vote. They must not be drawn into the vortex of political controversy.'" That is an interesting comment on the the current political scene in Canada, is it not?

"Nor do most judges wish to become a part of the political arena. Commenting on the use of the courts as a process for review of freedom of information legislation, Justice Dixon of New Brunswick stated, '... a court or a member of the judiciary does not really relish getting involved in this type of application.'"

Those are the paragraphs before. The paragraph after reads: "The applicant, including an applicant who wishes to correct personal information, or an affected third party, may appeal to an information commissioner. The information commissioner shall then investigate," and you go through your procedure as to how it should be handled.

The key point is that in the final analysis it is going to go back for the cabinet to make the decision, which in my view—I do not know whether incestuous is an accurate description—is certainly an abortion of the whole concept of independent adjudication of any impasse with regard to information.

Hon. Mr. Sterling: But I mentioned there is an independent step between.

Mr. MacDonald: That may be so, but the point is that if the independent step does not clarify it, then it is back to the cabinet. The final adjudication is going to rest with the cabinet. So you are back to the totally non-independent final adjudication.

Hon. Mr. Sterling: That is right.

Mr. MacDonald: For example, I was inter-

ested in the comment in the Canadian Bar Association study that was done.

Hon. Mr. Sterling: Then it is back to the people to make the decision whether or not that government is responding.

Mr. MacDonald: The interesting argument you are now advancing is that judges are appointed; they are not accountable. Any other sort of a tribunal is appointed and is not accountable. It must go back to the people who are accountable. Therefore, it must go back to the cabinet. They are presumably accountable in the next election.

That is a violation of the whole approach that if there is a dispute on whether or not the information is going to be made available, you must have an independent final adjudication. In Ottawa, with the exception of cabinet minutes—and I do not find this exception as worrisome as some other people do; I think cabinet minutes are a legitimate area for an exemption from freedom of information—they are now going to go for judicial review.

The comment made in the study of the Canadian Bar Association was, "Any retreat from the principle of independent judicial review by the present government would be indeed ironic, given the recent recognition of the value of independent judicial review in relation to the rights of individuals in the Canadian charter of rights and freedoms."

I do not need to remind you that this government was almost uncritically in support of the thrust of the federal government in final judicial review. I find it strange that not only you, but some of your colleagues—I was rather startled to discover that they shared this view, that you should not have some appointed person, it should be some accountable person who is going to make that final decision.

You did not take that stand on the whole charter of rights and freedoms for the individual, that the final adjudication is with the courts, which can presumably step back from it, take a look at all the evidence and come to a conclusion.

I would like to get your reasoning, other than what you have already given us publicly, as to why, after eight years of study and a very comprehensive, intensive and detailed review by a royal commission you set up yourself, which came in with a recommendation that you should have independent third-party adjudication, not going back to the cabinet for that final adjudication—let me put it into the context the minister gave to the Globe and Mail on the eve

of this session. Apparently he was being queried as to what was likely to happen on this, and the *Globe and Mail* attributes this to the minister:

"If cabinet asks me which way is easier politically, to go ahead or just drop the bill, I'll probably have to answer that the easiest thing politically is just to say no to freedom of information and walk away from it."

"Mr. Sterling said in an interview last week, 'There's no way we can win on this issue. We are going to be into hot water, regardless of what we do.'"

My interpretation of that is, you are right. If you do not move, you are going to be in hot water. If you do move, with what is a travesty or mockery of all the conclusions by the serious studies of freedom of information, namely, that you must have independent third-party adjudication—the courts or whatever—rather than going back to the cabinet, you are going to get flak. You will get it not only from editorial writers and all those who have been studying this issue for years, but you will legitimately get flak.

Would you mind giving us once again the reasons why you have your heels dug in with a recommendation to cabinet that most people think is going to be a perversion, an abortion, or whatever you will, of freedom of information as generally viewed in the last 10 years?

Hon. Mr. Sterling: First of all, I think the member asked me about this in the House, shortly after I gave the Belleville speech, in relation to that paragraph which he quoted into the record, and I think I indicated to him at the time that I found that particular part of the speech not clear in terms of what I was saying and I did not want to mislead the people I spoke to.

If you look back into the record, I indicated to the House shortly thereafter what I conveyed to them, that I was not misleading the people to whom I was speaking in Belleville in terms of following Dr. Williams with regard to the judicial and nonjudicial review process. I made that clear to the people I spoke to in Belleville. I was in no way attempting to associate my review process with the Williams commission. I think I stated, in answer to the question, that I disagreed with Williams in terms of his conclusions as to the review process.

In looking at accessibility legislation, which I call it—rather than freedom of information legislation—and privacy legislation, as I have said before, there is a balance you have to strike between the two. The people who have talked

to me—and the other people may be talking to you because they are not coming to see me or wanting to see me—are the people who are concerned more with the privacy area than they are with the accessibility area.

5:30 p.m.

I sat here from 1977 to 1981 as a member of a minority government and have served on many committees, including this one. I have become convinced that there is a need to reform the process. I hope you believe that because I say it sincerely. I am also a very strong traditionalist and I believe in trying to retain those things which I think have worked in the past and which are important to retain in a system that has proven itself fairly well over the past but which I think needs some revision in order to make it more meaningful to the public in future.

So I start from the process of access to information and from the premise that there should be better accessibility in terms of the political process to more government information. I agree with that concept. I start from the idea that by getting more information, in terms of the opposition and the public sphere, it will make a government more accountable. I start from the accountability part of it. Then I say to myself, "How can I construct a law which will in fact make our government more accountable?" At the same time, I am dealing with a number of other problems: how to bring forward a piece of law which I can get accepted, not only by cabinet colleagues but by a great number of people who work directly for the government or work for agencies of this government.

To compare our government with an American style of government, it is really quite a different kettle of fish. Of course, one must be most concerned about the areas of health, justice and the social areas as well because those systems are so important in the area of privacy.

In starting to construct my model, I look to what other people have done. I ask, "How important is the final decision of a politician, a minister, in deciding whether or not a document should go into the public realm?" I look at it in particular when dealing with the privacy issue, one where I may have a document which, if allowed to go out into the public realm, would injure a person or persons by doing so. I say to myself that the existing system is not perfect, but how can I make that better in the present situation? How can I get the co-operation of the bureaucracy of this government, to have it live up to the spirit of what I produce on paper?

How can I create a system that is fairly speedy

and will not be tied up in courts for a number of years, as I believe can happen in some of the other kinds of legislation that have been set up? I know you can talk about speedy trials and speeding up the process, but somehow these things get strung out over a long period of time and the timeliness of information in the political process is critical to what you are doing.

So I tried to turn the access legislation philosophically, into making it more of a political right than a legal right. In terms of the legislation which is now going to be brought before the cabinet, and hopefully to have something done with it in the fall, I believe I have accomplished an improvement in the system. If my model does not work in terms of ministerial responsibility, we will find in the bill that there is a clause which calls for mandatory review of the access provision in— I do not know what period of time.

Mr. MacDonald: Reviewed by whom?

Hon. Mr. Sterling: By the Legislature in three years or some period of time.

Mr. MacDonald: Do you mean review of the overall legislation?

Hon. Mr. Sterling: Yes. You will know exactly, because of the way the legislation is drafted, how many times how many ministers have said no to the particular request when the information commissioner has said a minister should give up a document. I guess I am not to the point where I want to give to the courts what I consider is a political function. No matter what kind of document—

Mr. MacDonald: Why did you do it through the courts? Why did you support the charter and the whole constitutional issue?

Hon. Mr. Sterling: I think there are different issues involved. You are dealing primarily with two litigants in a court situation over a court issue, a monetary issue of some sort. In this case, you are dealing in terms of fact, opinion and politics.

Mr. MacDonald: Our time is almost up. I want to try to come to grips with the issue because we could go on for hours on this thing. I do not object to your review of the process and perfecting the process; I go along with you mostly on that. However, when you get to the end, if there is a decision by the government at a ministerial level or what that says, "No, I am not going to give the information," why are you so stubbornly saying that there cannot be an

independent third-party adjudication as to whether or not?

Hon. Mr. Sterling: I will tell you what—

Mr. MacDonald: Just let me make this one point. On occasion the government has made information available because it served its political purpose to make it available. Indeed, in some freedom of information bills it says there are exemptions, but the exemption should not necessarily be a permanent one with the passage of time. It is legitimate that that can and should be made available. Who makes the decision? You? Who knows, because of the information, how useful it will be to you or to the opposition or whoever is seeking it?

The need for a third-party adjudication of that final impasse is basic. Without it, a freedom of information law might well become more of a roadblock to genuine freedom of information than a facilitator of it.

Hon. Mr. Sterling: In all of my speeches I have indicated there is an independent third-party review. There is still that final decision that a minister might make in terms of saying he is not going to agree with the decision. I will tell you why. Who has to bail out the problem out and who is responsible for the results of the disclosure of that information? It is the minister in the government who is responsible in the final analysis.

Mr. Chairman: I think we have now run the course of our time and by agreement we are going to vote on this today.

Mr. Breithaupt: That clock on the wall is five minutes fast. There are a few minutes if someone else does have a comment.

Mr. Chairman: I think not. My watch is about four minutes fast, which puts us at 5:40 p.m. now. If we are to do our vote, we are not too far ahead.

There being no further discussion, shall item 1 carry?

Item 1 agreed to.

Vote 1301 agreed to.

Mr. Chairman: Shall the estimates of the Justice Policy Field be reported to the House?

Agreed to.

Mr. Chairman: Thank you, gentlemen. We are not meeting tomorrow because of the Attorney General's bills in the House. We will meet here next Wednesday morning at 10 o'clock—please make it sharp—to go through three private bills. Then the estimates of the Solicitor General (Mr. G. W. Taylor) start at 10:30.

Mr. Mitchell: If the chairman promises to be here at one minute to 10, I will be here.

Mr. Chairman: The chairman will be here.

Mr. Brandt: Will you allow 30 minutes for three bills?

Mr. Chairman: Yes. They are supposed to be less than 10 minutes each. They will be straight forward with no problems, although I think

somebody told us the same about the bills on Windsor, North York and the demolition of Toronto buildings.

Mr. Brandt: That is why I raised the question, Mr. Chairman.

Mr. Chairman: That is correct.

The committee adjourned at 5:42 p.m.

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Ontario

LEGISLATIVE ASSEMBLY

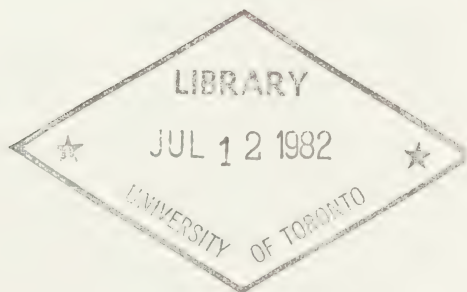
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Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice

Estimates, Ministry of the Solicitor General



Second Session, Thirty-Second Parliament

Wednesday, June 23, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 23, 1982

The committee met at 10:09 a.m. in room 151.

After other business.

10:25 a.m.

ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

Mr. Chairman: Actually we are right on time. That is surprising. We will commence the estimates of the Ministry of the Solicitor General. These estimates were referred to us by orders of the House, dated Friday, April 23, and Thursday, May 18, both 1982.

Does the minister have a statement to make?

Hon. G. W. Taylor: Yes, I have.

Mr. Chairman: Would you carry on with that statement, Mr. Minister?

Interjections.

Mr. Chairman: A few brief words to address to the committee.

Mr. Renwick: I listened the other night to the 30-hour, nonstop reading, and it went at the rate of about 25 pages an hour. I see this is 56 pages.

Hon. G. W. Taylor: Do you want to come back in about two hours, Mr. Renwick?

Mr. Stevenson: Is he trying to stimulate the pulp and paper industry?

Mr. Mitchell: I suppose, Mr. Chairman, we can congratulate the minister on being here at this time as the minister to do it. I think this is his first time with estimates before this august body.

Hon. G. W. Taylor: Yes, it is.

Mr. Mitchell: We wish him well.

Hon. G. W. Taylor: First, let me say I am very pleased to be here earlier than I had expected. I might add that it is very interesting for me, being a new minister, to see the process a ministry goes through in developing the material so estimates may be brought before this committee and before the Legislature. Having had to bring that material forward in a quicker manner than had been expected, I pay great compliments to the staff of the ministry for preparing the material and working some extra hours in getting it before you at this earlier date.

I might add further that I am exceedingly impressed with the capability of the people who draw this information together and prepare it for you. The information and background for the many questions you will ask, and hopefully

any questions you might not ask, are brought to me. They are prepared for any contingency. My deputy minister, John Hilton, and the staff of the ministry responsible for those operations associated with the ministry have worked diligently in preparing the materials.

With those opening remarks, I hope I can read through this material, not with the intonation Mr. Renwick heard with Ulysses, but I will try to give it a good second effort.

Mr. Brandt: Mr. Chairman, we could probably save a lot of time if the Solicitor General would give us a list of those questions he would not like us to ask.

Hon. G. W. Taylor: Like the Great Karnak on Johnny Carson, I have the answers to the questions and you have to think up the questions, or something like that.

The past several months have been busy ones for the ministry. In the first estimates for me as Solicitor General, I look forward to the coming dialogue with members of the justice committee. We have developed a number of important initiatives within the ministry since the committee last met to examine our spending estimates. I am certain committee members will find them interesting and I am confident there will be some useful suggestions from my colleagues to help us as we go about our business.

First, I would like to pay a public tribute to a couple of Ontario's most dedicated citizens, two men who retired recently after long and distinguished service to the people of this province. I refer to Dr. H. B. Cotnam, chief coroner of Ontario for 20 years, and Harold Graham, who served in the Ontario Provincial Police for 40 years, the last seven of those as commissioner.

These two men in their respective fields exemplify the kind of dedication and leadership that is among the best our public servants have to offer. They contributed a very great deal to making Ontario a better place in which to live. We are all in their debt. I know the members of this committee will join me in wishing Dr. Cotnam and Commissioner Graham a long and contented retirement. We in government were indeed fortunate in having available to us experienced and dedicated individuals ready to

take over the leadership in these two key areas of the ministry.

As many of you know, Dr. Ross Bennett has been deputy chief coroner for more than nine years. He was appointed coroner for the county of York in 1967 before becoming deputy chief coroner in 1972. Dr. Bennett is a fellow of the American Academy of Forensic Sciences and vice-president of the International Association of Coroners and Medical Examiners, which met here in Toronto last week. He is also co-author of a study of drugs and alcohol in fatally injured drivers and pedestrians in Ontario. At present, he is involved in a similar two-year study of alcohol and cannabis involvement in motor vehicle fatalities.

Commissioner Jim Erskine, a Guelph native, is a 36-year OPP veteran. He served in the Niagara Falls and St. Catharines detachments before being posted to Toronto. He organized and became the first director of the OPP anti-rackets branch. The branch investigates organized white-collar crime, frauds, counterfeiting and criminal conspiracies. Commissioner Erskine has served as a superintendent and assistant commissioner and for the past four years has been deputy commissioner in charge of operations. I am sure committee members will agree that in these two fine individuals we have worthy successors to Dr. Cotnam and Commissioner Graham.

This complex decade of the 1980s continues to present its own challenges to those who serve us in the fields of law enforcement and public safety. Operating in periods of severe constraint, I believe those involved have coped with the challenges facing them in an efficient and dedicated fashion. I believe they will continue to do so, given the support of the public and those of us in public life. It is heartening to me that all indications are that the vast majority of citizens of this province continue to have great confidence in our police officers and our firefighters.

One of the hallmarks of the 1980s is increased public scrutiny through media and other public groups and committees. I, for one, think that it is a positive thing. We, as politicians, know that public scrutiny and criticism, when it is done constructively, can be beneficial to us as we go about our business. It is only the mindless, niggling, self-destructive type we need really fear. The fact that our police and firefighters continue to enjoy a high level of public confidence, even in the glare of a brighter public

spotlight, is proof enough that they continue to do their jobs well.

We have budgeted in the ministry for \$284,597,000 for this fiscal year. That is an increase of \$59.2 million, or 26.3 per cent, over the last fiscal year. Much of that increase is accounted for in salary and benefit awards plus inflationary increases. Salaries and wages are estimated at almost \$183.2 million for this fiscal year. That is \$41.7 million higher than last year, a difference of 29.5 per cent. Employee benefits are almost \$29.5 million, or 30 per cent higher. Members of the committee can see that salaries and related benefits represent 74.7 per cent of the total budget.

The total budget also includes just over \$10 million for the Ontario Provincial Police radio communications system, which is badly outdated. We believe an upgrading is essential to afford our citizens and our police officers maximum protection. I should add that this will not only help to maintain the operating efficiency of the Ontario Provincial Police, but will be beneficial to all police forces in the province.

As you know, the bulk of the funding from the Ministry of the Solicitor General goes towards maintaining the operations, management and support services of the Ontario Provincial Police. That amounts to \$245,802,000 for this fiscal year.

Again this year, we do not possess a great deal of financial flexibility in this time of government restraint. Wage and salary benefits will eat up much of the increased ministry budget.

Members of the committee know the OPP is the fourth largest deployed force in North America. There are currently 185 regular detachments plus six summer detachments and two subdetachments throughout Ontario, from Kenora to Hawkesbury and Windsor to Long Sault. The force is also responsible for policing the vast majority of the 174,000 square kilometres of Ontario waterways.

The force has had to live with the restraint program, and the fact that productivity continued to increase with the same complement of police officers over the past several years does great credit to all ranks. We are confident that the new communications system will enhance that productivity even further. Progress in the design of the equipment is on schedule and installation of equipment is due at the end of December 1982.

Members will recall the train derailment at Medonte township on February 28, which necessitated evacuations. As chairman of the emer-

gency planning committee of cabinet, it was my baptism of fire, so to speak. At that time, it was my impression that the OPP mobile command post could be improved for heavy winter weather. I am happy to report that the new mobile command and communications centre is now fully equipped and ready to respond to any occurrence on a 24-hour basis. As such, it will provide on short notice an onsite command post at the scene of a train derailment, plane crash or other emergency.

Moving to another initiative, the committee members may be interested to know of the province-wide youth program being initiated by the force's community services branch. Entitled VIP, which stands for values, influences and peers, the program originated in Duluth, Minnesota, and is being tailored to meet Canadian needs.

The program teaches elementary school students how to deal effectively with negative peer pressure and influence. It is jointly taught by the elementary school teacher, together with a local police officer in the classroom situation. Various subjects on its curriculum would include drugs, vandalism, theft, dating and setting standards. The community services branch is working at present with the Ministry of Education in an attempt to institute pilot projects in selected school boards across the province by the beginning of the next school year.

10:40 a.m.

If results are positive, plans will be made to have a package prepared for local boards of education to commence in September 1983. Senior OPP officers are optimistic that the VIP program could make significant strides in the reduction of juvenile crime in the province.

Also with youth, the force is supporting an anti-vandalism project in the Gravenhurst area this summer. Seven students are working in the area, under the concept of Teens on Patrol. Students will patrol the park areas in an attempt to deter boredom of youth and thereby prevent possible vandalism occurrences. This program supports Operation Pride, which is an anti-vandalism project spearheaded by the region of Muskoka, specifically in Gravenhurst.

I would also like to inform committee members that the field division, the operational arm of the force actually providing police services to the public, has further expanded its participative management philosophy. We are attempting to further decentralize the decision-making process to bring about closer contact with the public. Both long- and short-range planning are

now conducted at divisional, district and detachment locations, rather than mostly emanating from OPP headquarters. This forum provides unobstructed communication on planning questions from top to bottom.

Preparations of annual budgets now administered at division and district levels will be decentralized to detachments in fiscal 1983-84. This will ensure that resource allocation and budgetary concerns are considered and developed in concert. Collectively, these steps should serve to ensure that maximum productivity is extracted from resources available, thereby providing the best level of service at the least possible cost.

Certainly, amongst the most welcome news received by officers of the force was cabinet approval for hiring 120 additional provincial constables. These officers are to be deployed to provide backup safety at 87 identified detachments. Backup personnel assist in providing more frequent two-man patrols when attending potentially hazardous occurrences. These incidents range from crimes in progress to patrols in isolated areas. Numerous factors were considered in identifying those locations requiring backup personnel, including time required for backup personnel shortages and guidelines set out in police orders.

Recruitment commenced in January 1982. The force has deployed 72 new provincial constables as of the end of May 1982. The remaining 48 constables are to be deployed during the remainder of this year.

Another initiative occurring since the committee last met on Solicitor General matters is the opening of the new OPP training centre in Brampton. The centre was officially opened last October. The 97-acre site, with renovated, refurbished buildings, provides four classrooms and housing for 120 students. The larger facility and increased staff complement have allowed upgrading of all force training programs.

This is particularly true in the area of practical work. For instance, there is a crime scene house on the property where various scenarios can be set up for officers to investigate. We are very proud of the new facility, and the ministry would be pleased to arrange a tour for any members of the committee who are interested.

The centre offers continuous refresher courses for senior constables. About 680 constables on the force have already taken such courses. General courses and needed seminars to keep OPP specialist units updated are also conducted at the training centre. Since opening, approxi-

mately 1,700 officers of all ranks have attended the various courses offered.

To bring committee members up to date regarding 1981, as of December 31, the force had a strength of 4,025 uniformed members and 1,182 civilian personnel.

In 1981 the force handled 92,775 actual nontraffic criminal occurrences. I am happy to report that is a decrease of 2.3 per cent over 1980. Crimes against persons increased by 0.5 per cent. There was no change in homicide offences. Crimes against property decreased by 2.9 per cent, with the majority of offences in this category showing a decrease. During 1981 there were 32,131 Criminal Code charges laid against 24,809 persons. In addition, 26,697 charges were laid against 17,390 persons in connection with driving offences under the Criminal Code. A total of 369,839 charges under the Highway Traffic Act and Ontario regulations related to traffic enforcement were laid.

There were 6,727 persons charged with offences under federal statutes other than the Criminal Code. Cases relating to drug offences and Indian Act offences accounted for the majority. During the year 439,803 persons were charged with offences under provincial statutes. Traffic and liquor cases accounted for almost 96 per cent of the work in this category.

There was some good news dealing with traffic statistics. The number of accidents decreased by three per cent. More important, fatal accidents decreased by 3.6 per cent. The number of accidents resulting in personal injury decreased slightly, by 0.5 per cent. The traffic division's primary goal will be to continue to reduce the prevalence of fatal and personal injury accidents, thus increasing the safety and security of the general public.

The number of people killed in traffic accidents in 1981 was 910, a reduction of 37 over the previous year. There have been reductions of approximately four per cent in the numbers killed over the last two years. Traffic safety remains a major priority of the OPP and of the ministry. We will continue to strive to reduce that horrible toll. One needs only to monitor the weekend newscasts or read the Monday papers to recognize the carnage—one, two, three or four lives snuffed out, more people maimed needlessly. Most often, it takes its toll of the young.

I need hardly remind members of this committee that traffic accidents are the number one killers of young people under the age of 25. Accordingly, you can be assured this ministry

will continue to be as aggressive as possible in combatting this epidemic. The OPP will continue to rigorously enforce the seatbelt law, which has proven to be a lifesaver.

There was also an increase in the number of people charged with drinking and driving offences as a result of the OPP breathalyzer program. Charged were 13,601, compared with 12,883 in 1980. During 1981 the force increased its detachment breathalyzer units, placing new units in nine different detachments.

There were other ministry initiatives as well. You will recall the Christmas campaign entitled, Feeling No Pain, jointly sponsored by the ministries of the Solicitor General and the Attorney General. It stirred comment across the country, and police forces from around the continent have requested copies of the posters.

In addition, the ministry jointly sponsored another poster campaign, involving Canada's world champion skier Steve Podborski. It was aimed particularly at young people, urging them to buckle up for their own safety.

Statistics furnished by the Ontario Police Commission indicated that stringent measures, coupled with making the public increasingly aware of the dangers, are really beginning to pay off. Ontario Police Commission statistics show that in the first three months of 1982 fatalities were down by 39.1 per cent and injuries by 5.1 per cent. That means overall, including OPP statistics, there were 110 fewer deaths in motor vehicle accidents than in the same period in 1981 and there were more than 1,000 fewer injuries.

It is heartening to note that since the Ministry of the Solicitor General became actively involved in promoting highway safety in 1979, the number of fatalities has dropped each year. While it may still be too early to say for certain, results to date would indicate our new 12-hour licence suspension law is also having an impact.

10:50 a.m.

The Ontario Police Commission is another branch of the ministry which has expanded its efforts to promote highway traffic safety initiatives. Representatives of 75 municipal police forces and the OPP attended a special seminar at Queen's Park this spring to be briefed on the new child restraint legislation. The OPC is developing a training manual on child restraint for police. It is also involved in a public education campaign alerting parents to their new responsibilities in this area.

The Ontario Traffic Safety Council, under the leadership of Commissioner Erskine, is

working with the Addiction Research Foundation on establishing drinking and driving patterns in an effort to aid law enforcement.

You will recall the first roadside drivers' survey. A second survey is planned for 1983. We are also looking at the need for a public education campaign to remind motorists of their obligation to make way for emergency vehicles, such as ambulances and fire engines.

In a related area, the Ontario Police Commission is initiating a new driving course for police officers at the Ontario Police College at Aylmer. We are setting \$160,000 aside for that purpose. To ensure all recruits are properly instructed in the handling of a police cruiser, special in-vehicle training will commence at the college this fall. While classroom instruction in defensive driving has been provided for some time, the commission feels it is essential to upgrade driving skills in simulated real-life situations.

The OPC, under chairman Shaun McGrath, has also been very busy over the past year in other areas. The commission's inspectorate branch has undertaken an evaluation of all 127 municipal police forces in the province. That assessment is nearly complete, and a great many suggestions for improvement and upgrading have been made. This constant monitoring is essential if the quality of policing in all parts of the province is to be maintained.

In the same vein, a resident inspector will be assigned to monitor the 21 municipal police forces in northern Ontario. This will ensure those forces in the northern part of our province will have ready access to advice and assessment.

The commission is also developing plans for a special training course in the use of radar by municipal police forces. The OPP already provide some five days of instruction on radar, but an upgrading of skills for some municipal forces is desirable.

The program of installing new police communications networks to meet modern needs for municipal forces is also continuing. The 87th such system to be designed by the technical services branch of the commission went into service this spring in Timmins. Similar systems are currently being installed in Espanola and Owen Sound.

Also as an aid to our municipal forces, the commission is beefing up its senior and intermediate command courses at the college. This should help to provide a higher standard of leadership. Some 400 police officers are currently enrolled in university-level degree courses

and efforts are under way to upgrade educational standards for police.

It is also my intention this summer to give the Ontario Police Commission some much-needed assistance by appointing a full-time vice-chairman and one or two part-time members. The commission's work load has increased substantially over the last year or so, and it is most important that these increased commitments be met.

The OPC is also represented on a committee established last fall to review and revise the Police Act. The chairman of the committee is John Ritchie, director of legal services for the ministry. Police governing authorities, chiefs of police and police associations are involved, as well as the Association of Municipalities of Ontario. The committee has been assigned the chore of completely overhauling the Police Act. This updating is long overdue, and I am pleased to report substantial progress is being made. This committee has had a number of meetings during the initial stages which has involved a general discussion of the issues in the Police Act and regulations.

First, we are attempting to pinpoint the issues on which everyone has agreed. Then we are exploring the differences of opinion where they exist. There will be conflicts on some issues, and we in government may have make some tough decisions, as they are often referred to. We want to minimize this conflict wherever possible. After general discussion, the Police Act review committee will move into consideration of draft legislation. We may have to reserve our judgement on some very contentious parts, but to the extent possible, I would like the committee to produce a draft bill.

Looking to the next stage, we in government would be inclined to release the draft bill as part of a white paper. Some input from the general public has come directly to the ministry, but we will want full and further public comment. By the time it gets before the members of this committee as a legislative proposal, we should have undergone a broad spectrum of consultation, both from the police communities and the general public.

Getting back to the progress which has already been made, I would like to touch briefly on some of the issues that have been discussed. Regarding the role of the Ontario Police Commission, there has been quite a bit of support for a strengthened and more active role with regard to police standards. The group talked about everything from promotions and performance appraisals to accommodation, clothing and

equipment. Regular inspection of police forces was also seen as a positive improvement.

There is also a general consensus on the need for greater consultation between police management and police associations on matters affecting the conditions under which police officers work. One possibly contentious item is the composition of boards of commissioners of police. We will be deciding this issue as part of the Police Act review. The general policies of the government have been well documented in recent years, and I can tell the committee members I have yet to see a reason for altering the government's position. We will continue to appoint the majority of members to these boards.

The administration of justice is a constitutional responsibility of the province. I, for one, would have very grave doubts about relinquishing provincial control over police governing authorities. Furthermore, I understand the importance of ensuring the independence of policing from local politics. I am always prepared to listen to a reasoned argument, but the traditional approach on the composition of police boards strikes me as being eminently sensible.

I have some sympathy for the concerns of municipal councils which must raise much of the money to operate local police forces. We are interested in hearing proposals on issues of this nature, but I am not leaning towards greater control of local boards of commissioners of police by municipal councils.

At this point, I would like to bring the members of the committee up to date on the situation regarding the Ontario Humane Society. An assessment was instituted by the ministry earlier this year following a number of public statements made about the society through the media, through letters to the ministry or through contact with members of this Legislature. The assessment found no evidence of wrongdoing. It did show a number of organizational, managerial and financial problems currently exist in the operation of the society.

One of the recommendations by ministry staff was that an independent management consultant firm be engaged. It would advise on appropriate action and bylaw amendments. It would study organizational, financial and management issues raised by the report. The firm would also look to the issue of the composition of the board of directors and classes of membership.

I am pleased to announce that the firm of Price Waterhouse Associates has been chosen from among several firms which tendered for the job. The firm will be working with the

ministry and the society in conducting the review. We are expecting a report within a few months.

It was also a busy year for the office of the chief coroner. The objective of the coroner's office is to investigate all sudden and unnatural deaths and, in conjunction with related activities, to use the knowledge gained to promote better health and safety for the citizens of Ontario. The province's coroners conducted more than 27,000 investigations in 1981. There were 258 inquests with corresponding verdicts received.

The centuries-old tradition of our coroner's jury system again served us in good stead. The results obtained have vindicated our faith in the good judgement of the members of these panels. Their recommendations help us to prevent future deaths. The number of recommendations made by juries last year number 1,163. Of these recommendations, 686 have already been implemented. That is consistent with our average since over half of the recommendations find their way into law or regulations in one form or another.

At present the chief coroner and the regional coroner are working with senior crown attorneys in Metropolitan Toronto in an attempt to improve inquest procedures. This would help save possible delays and cut costs by arranging pre-inquest meetings with counsel representing persons with standing.

11 a.m.

Since taking office, Dr. Bennett has met with directors of the various organ donor programs to establish present needs. This includes growth hormone from pituitary glands, corneas for corneal transplants, kidneys, bones and joints. A new co-ordinated program is being developed to better inform the public of the need for various organs and tissues. There will also be a program to alert the police, paramedicals, nurses and doctors to look for a signed donor card when a sudden death occurs.

Records from the coroner's office show emphatically that the number of suicides has decreased. In 1981 there was a decrease of 47, or almost four per cent, from 1980. Suicides reached a high of 1,382 in 1977 and have decreased to 1,273 in 1981.

Similar alarms have been raised by the media regarding youth suicides. Since 1973, when the first accurate records were kept, there has been a decrease of almost nine per cent in teen-age suicides and almost four per cent in the 20-to-29 age groups. Still, the chief coroner and his staff

are increasing their assistance to suicide prevention specialists and the distress centres.

One branch of the ministry which works very closely with the coroner's office, as well as police and court agencies, is the Centre of Forensic Sciences. The continuing expansion of the demand for the centre's services, coupled with the financial constraints, has resulted in a substantial backlog of cases awaiting examination. These estimates contain funds which will permit the centre to hire and train six additional staff to help alleviate some of these problems.

One of these persons will be assigned to the breathalyzer training program, allowing an increase in the number of spaces from 180 to 300 per year. These additional spaces will permit police forces to more effectively plan for the rotation of trained men in this demanding work.

The centre also worked with the Ontario Police Commission in testing the protective vests supplied to the province's police officers. I should add that the centre was not involved in the fitting process, which created some problems for women police officers. However, those officers will be resupplied as expeditiously as possible with contoured vests, if they desire them. The province's share of equipping our 18,000 police officers amounts to \$1.8 million. That includes the province's half-share in equipping municipal forces. That money has already been paid to those individual police forces.

We turn now to the office of the fire marshal and, specifically, its implementation of Ontario's new fire code. The code came into force in November and the legislation was welcomed by the fire service across the province. Two parts of the code on flammable and combustible liquids and retrofit have yet to become law since they involve some complex issues. The liquids part would involve proposed federal legislation on transportation of hazardous goods. Retrofit involves building code-fire code compatibility. Work on retrofit is proceeding under the direction of the fire marshal, with industry, fire and building representatives being consulted.

We are also embarking on some much-needed upgrading of the facilities at the Ontario Fire College in Gravenhurst. The college was established in 1949. It provides advanced training for municipal fire department officials and fire safety inspectors. It currently accommodates 46 students and 14 staff.

Through the initial expansion the college will be able to accommodate 100 students. However, new kitchen and dining room facilities will be provided to handle the eventual student

population of 150. The expansion will include the addition of student and staff lounges, two suites for visitors, a laundry, registration offices and other auxiliary facilities. The project will proceed to tender late this year. It involves the replacement of some existing buildings with new structures built to modern fire safety and energy conservation standards.

Also, this year we will be spending about \$450,000 on the auto extrication program. Members will recall that the program was established in 1979 after an interministerial task force on crash rescue recommended the ministry establish a province-wide auto extrication program through the office of the fire marshal. This included training staff and the purchase of a mobile training unit. To date, 1,500 firefighters have received training. Plans are under way to give training to an additional 3,000 in 1982.

Thirteen informational seminars were conducted by the staff around the province, including the Ontario Police College in Aylmer, with a total attendance of 1,163 people. We will be training about 800 OPP officers working in selected areas throughout the province where no fire department or auto extrication services are provided.

A \$5-million program was announced in 1981, which will enable municipalities to purchase the auto extrication equipment necessary to establish a province-wide program. We feel it will take several years to fully implement the program and, therefore, preference will be given to areas which demonstrate the greatest need. The province will provide the funds on a 50-50 basis, with priority given to local governments wishing to provide the services on a county, district or regional basis. Funds will also be provided for services rendered when a rescue unit responds to an accident on a provincial highway.

To implement this program, the fire advisory services of the office of the fire marshal will be employing the services of a program co-ordinator, one liaison officer and support staff. This year's budget also provides for the placing of four additional fire safety advisers in northern Ontario in order to improve fire safety services in the area.

Regarding arson, the increase in arson fires has been persistent in the past several years, showing a 45 per cent increase in the four years ending in 1980. To reverse this trend, the office of the fire marshal embarked on an intensive training program for fire and police officials, the insurance industry, crown attorneys and the public. I am delighted to report that the pro-

gram appears to be having an effect. The arson statistics for 1981 indicate a reduction of more than nine per cent over 1980. The team approach promoted by this ministry in the fight against arson seems to be paying dividends.

Committee members will recall that the inquest into the fire at the Inn on the Park resulted in a recommendation that the responsibility for all hotel fire safety inspections be within the jurisdiction of the fire marshal's office. As a result, 70 Liquor Licence Board of Ontario inspectors have been transferred to the office of the fire marshal.

There has been an intensive training program for these inspectors, who will now be responsible for all 4,500 wet and dry hotels. All the new staff are enthusiastic about the change in their status from liquor inspectors to fire inspectors and are doing an excellent job for the fire marshal's office.

I know the members of the committee will be interested in the next announcement, especially the member for Riverdale (Mr. Renwick), who has advocated such a course. The government has decided to call an inquiry under the Public Inquiries Act into the subject of high-rise fire safety in Ontario. The purpose is to apprise all of us of possible improvement measures aimed at fire safety in this vital area. While the exact conditions of the inquiry are yet to be set, it will certainly include assessing the dangers to which occupants are exposed when a fire occurs in a high-rise building.

We would also expect an assessment of the public's understanding of the action that should be taken in the event of a fire. The judge might also assess the need for public education programs. There might also be an investigation of the public's perception as to whether occupancy of high-rise buildings is especially hazardous and, if so, why.

Of course, the judge could reasonably be expected to examine the effectiveness of fire prevention inspections conducted in high-rise buildings. The judge could recommend changes to laws or practices and procedures and make any other appropriate recommendations. We are anxious to get under way as soon as possible and will do so when the Attorney General (Mr. McMurtry), in consultation with the Chief Judge, has occasion to choose the person who will conduct the inquiry.

11:10 a.m.

Finally, Mr. Chairman, I would like to bring the members of the committee up to date on the activities of the emergency planning office. Our

first priority continues to be liaison with municipalities. We continue to assist and encourage them in developing emergency plans for their communities. Also, a series of seminars, briefings and exercises, involving as many as 200 people each, were conducted in the current fiscal year alone. The aim of the exercises was to test and improve provincial, municipal and Ontario Hydro contingency plans.

A schedule of exercises covering a five-year span has been developed for all nuclear plants. We are also consulting with officials in Michigan, Ohio and New York states regarding mutual warning systems related to nuclear facilities.

Regarding our proposed emergency planning legislation, there has been extensive consultation, including consultation with those involved in the recent Medonte derailment. I hope to be in a position to introduce the bill shortly. Regarding Medonte, the invoices relating to firefighting expenses of the municipalities involved are now available. I shall be approaching Canadian Pacific Rail shortly regarding their proposal to pay those costs.

Mr. Chairman and colleagues on the committee, that is an outline of some of the activities the ministry has been involved in. I hope the committee members will find the material useful, and I now look forward to our dialogue in this my first Solicitor General's estimates.

Mr. Renwick, it was not quite as long as Ulysses. I have greater sympathy for those reading Ulysses now.

Mr. Chairman: It was at the rate of 75 pages to the hour instead of 25.

Thank you, Mr. Minister. Mr. Spensieri, the Liberal critic, do you have any words to say to us?

Mr. Spensieri: Yes, I have a few. Thank you.

Like Mr. Mitchell, I would like to take the opportunity to welcome the member for Simcoe Centre on his new appointment and to wish him well. This is also the first set of spending estimates for the ministry in which I am involved in a critic's role. I trust we will be of mutual succour to each other as we learn the intricacies.

Critics before me have pointed out the continuing incongruity of having had the same chair of Solicitor General and Attorney General occupied for some 10 years by the same person. My friend the member for Huron-Bruce (Mr. Elston) said much on the subject last year. The opposition should take some credit—after some 10 years of occupying the wilderness—for us having now come to a position where the

situation has been rectified, where the Solicitor General occupies his proper role, separate and distinct.

The question now becomes one of whether the ministry will be separate, but equal, or only separate. Those of us who have the temerity to presume to talk about matters of administration of justice can only hope the Solicitor General, as he evolves in his role, will find no difficulty whatsoever in assuming a position separate, but equal, and a position of eminence within his cabinet confines.

First, I would like to deal with this very important question of what I would call the myth of separation versus the substantive aspect of separation of the two ministries. As other critics have pointed out, there has been in the past a tremendous potential for schizophrenia when one appears in both capacities. This potential for schizophrenia is not going to be ruled out by a cosmetic separation if it is not accompanied by a *de facto* independence of these two roles.

I must say, without really wishing to injure our relationship at this early stage, that the first year's performance leads to the inescapable conclusion of an unwillingness or inability to assume a role of pre-eminence for the Solicitor General's ministry. We only have to look at very recent examples, the Hospital for Sick Children being one of them, where we saw that the central issues around that unfortunate set of events were really the role of the coroner and the primary role of reporting of deaths, accidents, etc.

We saw that the secondary and most important aspect of these incidents was the investigative role and ability of the police to engage in effective evidence gathering and marshalling for trial. Yet, as these roles were so pre-eminently Solicitor General's roles, we saw that the spotlight and the glare were, in effect, almost unilaterally taken up by the Attorney General and, to some extent, by the Minister of Health.

We note, for instance, in subjects dear to our hearts from Metro, the Metropolitan Toronto Police Force complaint project. It is essentially a police role because it will involve the sanctioning and censuring of police officers, the disciplining of officers who have overstepped the boundaries of law enforcement. Therefore, it is one in which, I would submit, the Solicitor General would have to have a role of leadership.

It was most recently brought up in the press in the recent incident of the police breaking up a

rather large and noisy party in Scarborough. The Solicitor General could have advocated a degree of interest by those offended by the police actions to involve themselves with the police complaints procedure. He could have taken a role of leadership in encouraging that. Yet we saw that there was, at best, silence.

Perhaps this is an evolutionary matter, but the sexiness or the political viability of an issue should not determine which one of the two, the Attorney General or the Solicitor General, takes over the role. Rather, we should look at the specific, mandated jurisdiction of the Solicitor General, the various acts he is charged with enforcing, in order to determine who takes a leadership role. As I say, this is an evolutionary matter and it is to be hoped that assertiveness will come to pass.

The question we have for the Solicitor General from our caucus standpoint is that after the pilot project for Metro winds up, we would hope the Solicitor General will have plans to implement a similar system across Ontario municipalities and that he will bring it fully within his field of endeavour.

We would also like to ask the Solicitor General, in his role as head of policing in this province, what steps are being taken in order to bring into line the new rights created by the Charter of Rights, such as reading of citizens' rights during and prior to arrest. What steps has he taken, or is he about to take, with his various police forces—the OPP, the regional and municipal forces—to ensure that there is an adherence to these guidelines, not only a respect for the letter of what the Charter of Rights is trying to confer on accused persons, but also the spirit?

The second point I want to touch on is the defensive or apologist role, which is sometimes easy to come about, when one considers a ministry such as that of the Solicitor General. One has only to look at the various statutes which are being enforced for which the Solicitor General has responsibility—for instance, the Fire Marshals Act, the Anatomy Act, the police complaints legislation, the Private Investigators and Security Guards Act, the Coroners Act and the Fire Departments Act.

We can see, even without the benefit of wearing the mantle of power, that the Solicitor General deals on a day in and day out basis with very regimentalized, quasi-military and therefore very inwardly cohesive groups of law

enforcement and public safety professionals in their field.

11:20 a.m.

The danger becomes, Mr. Chairman, and I suppose indirectly to the minister, that there is a perception in the mind of the public that the tail is really wagging the watchdog.

Two examples come to mind even from my very modest experience in constituency matters. On one of them I have corresponded at length with the minister and it involves the case of Constable Gushie of the Halton Regional Police Force.

Very briefly, so as not to take up the members' time, but I think it serves as an illustration of what I am saying, this was a case where a constable, after 25 years of service, found himself in the unfortunate position of being severely incapacitated by a heart condition. There was the usual in-house routine review of his case. I assume that, in due course, the powers that be reported to the Solicitor General. The Solicitor General said that all was well because he was so advised.

It creates a kind of concern and perception in the public mind that, because we are dealing with these inwardly cohesive groups with a well-defined in-house procedure, there is almost an inability on the part of the Solicitor General to peer into the internal process and have justice prevail where justice should prevail, if I could use that overworked phrase.

Another very small example I had involved the granting of a police-pound licence to an outfit in the Brampton area which for years had received police-pound licences from the Peel regional board of police commissioners. For various reasons, perhaps political, perhaps of another nature, when the awards came up this year the board of police commissioners decided, in its wisdom, to withdraw a 10-year pound licence for these individuals. It granted the licence to an outfit which had been incorporated the night before the tenders were closed, which obviously knew the manner in which to proceed, and which had none of the equipment or facilities which would have suited them to retain a pound licence.

This brief illustration points out the capability or the possibility of wrongdoing, the possibility that such wrongdoing does not get discovered within the process.

Of course, I will be happy to inform the minister on all the relevant circumstances with respect to this case, as I have not involved him with it to this point. I use it merely as an

illustration that the Ministry of the Solicitor General is perhaps different from all the other ministries in this aspect. It does not deal with subordinate and civil-service type situations but with delivery of police services, firefighting services, coroner's services—with professionals. Therefore there is a need, for both the minister and us, as members of this committee and as MPPs, to be ever vigilant in this process.

The minister began by saying that he had had his baptism of fire. Were it not for the tragedy that happened in Orillia we might have said that the minister began with a disaster, and that perhaps we can move forward from there.

I am very happy to see that there is a continuing dialogue and a continuing list of publications, of which the Solicitor General has been very kind to keep us informed, with respect to the Emergency Measures Act.

My comment about both the study paper and the draft legislation is that I see it as being totally permissive upon the municipalities. I see it as creating a framework within which well-intentioned municipalities could, in fact, create their own emergency measures. However, it does not seem to me, at least at this stage, to have enough central clout. Perhaps you should be looking in that direction.

Both the mishaps we have dealt with in recent years in Mississauga and Orillia have involved large evacuations and considerable hardship for large numbers of the population. I think the Solicitor General ought to be looking at ways whereby we can bypass the costly litigation route in order to receive compensation for out-of-pocket expenses and losses. Perhaps something similar to the criminal injuries board might be created.

We would also like to ask the Solicitor General which of the recommendations made from the joint report of the Mississauga evacuation by the Institute for Environmental Studies and members of his ministry have now been acted upon, which are in the process of being implemented, and so on.

We are also particularly concerned that the emergency planning legislation does not seem to address itself sufficiently to the question of nuclear emergencies, whether originating with Ontario Hydro or whether from our neighbours across the street. An example is what happened with the Detroit nuclear installation recently, where nuclear hazards were created, but Ontario, I believe, was not even advised.

The issue of specific guidelines for the transport of dangerous substances also comes to

mind. We realize that a greater degree of co-operation has to take place with the federal authorities.

We would ask the minister what continuing mechanisms are in place for co-operative legislation in this regard, and whether specific guidelines of a provincial nature will be forthcoming in connection with the transportation of these substances.

We are also, of course, thankful that training is now being provided, both at Aylmer and at various other facilities, with respect to high-speed chase driving and skid driving, etc.

We are grateful that while the Solicitor General has not seen fit to do something about the question of a general overall policy regarding high-speed police chases, he has at least taken the step of properly training officers who are going to be engaged in these destructive chases.

A question still remains in our minds, as Russ pointed out in previous estimates, as to the need for uniform policy with respect to these chases, so we are no longer faced with the disparities in the various forces. These disparities are all too obvious.

If one looks at the directives given by the Metro force, and I quote, the Metro force seems to indicate that, "If at any time good judgement indicates that the risk to persons or property outweighs any advantage to be gained by continuing, the pursuit shall be abandoned."

We look at the Ontario Police Commission reminder of November 1979. They say, "Regardless of the circumstances, the police officer would be derelict in his duties if he failed to give pursuit."

We look at the policy of the RCMP, the federal force, and they seem to almost go the other way. They say: "Avoid dangerous motor vehicle chases. Rely instead on your radio equipment, road blocks and licence plate identification to apprehend a fugitive."

What I am saying, Mr. Chairman and Mr. Minister, is that it is not enough simply to have skid training courses or to refit vehicles by adapting them so they are capable of high-speed chases. It is necessary to come out immediately, if not sooner, with a clear-cut policy regarding police conduct in these contexts.

I am also thankful, Mr. Chairman, that the Solicitor General has brought into being the uniform Fire Code, Regulation 73081 under the Fire Marshals Act. I think this will go a long way towards alleviating the plethora of lethal circumstances and events which have, especially in hotel fires, etc., marked the previous years.

One aspect which does not seem to be addressed is the question of arson for hire, if you will, or organized crime getting involved in arson.

11:30 a.m.

Perhaps, through the intelligence branch, the Solicitor General can tell us exactly what inroads have been made into this question of what I would call commercial fires set for profit. The Solicitor General will be aware, as well as Mr. Erskine, of the recent conviction of one Mr. Mercuri with respect to the Acton hotel fire. If I could digress here for a moment, this was a conviction which took place largely through the services of a gentleman who has become well known to the Ontario police force and the intelligence division. I am referring to Mr. Cecil Kirby, who has been of note in the papers in the past few months.

I would not wish to be construed as having any sympathy whatsoever for the scum who parade and set themselves up as belonging to organized crime in this province. Often, I might add, this causes severe hardship and inflicts pain on a community to which I have the honour of belonging, which is generally a hardworking community having no contact or link whatsoever, any more than any other community, with organized crime.

This scum, of course, has to be fought with every resource available. Lately I have come to see, as a person who follows these matters, that the protagonist in these various convictions, whether it be Mercuri or the Romeo and Commisso conviction, or other acts such as attempts on Mr. Volpe's life, etc., the central protagonist appears to be this Mr. Kirby. He has become a favourite tool in the hands of the police.

We are really wondering to what extent, Mr. Taylor, we will continue to have persons who are known to the police force as contract killers being used in this manner, even though the objective of convicting accused in this field is an entirely laudable one.

I look at this in the context of the false affidavits in the Bruce Lorenz case by Messrs. Stevenson and McLean, and we have to ask ourselves to what extent there is some element of overzealousness in these police investigation matters.

I would like to turn my attention very briefly to the chief coroner's office. There is no doubt whatsoever that we are well served by what is perhaps the only province that has an all-doctor team in its coroner's office.

As the minister states in his own report, the inquest procedure provides an excellent medium to disseminate the true circumstances relating to a particular death, thus providing the public with a warning about a hazardous situation, trend or contingency. This was said in 1980, and these words must sound a little hollow when one looks at the situation.

Perhaps we should ask the Solicitor General whether he sees a need to expand the list of mandatory inquests, not just where the death occurs in a correctional institution or where the person is otherwise in custody, but perhaps they should be expanded to all kinds of treatment centres, to public buildings. We might look at fitness centres, spas and recreational clubs where deaths occur. At the very least, there should be clearer guidelines as to the reporting requirements with respect to hospital deaths and deaths in a public place.

Particularly in this context, we should look at tighter guidelines with respect to the battered child syndrome which has come to be so much in the fore in the press. This syndrome seems to mainly affect children under two years of age and seems to be an increasing cause of deaths in infants. We should perhaps be looking at an expanded role for our coroner's staff in that regard.

I am happy to see Mr. Erskine, who sits on the committee studying the role of cannabis and alcohol in traffic fatalities, is with us. I would ask the Solicitor General whether he considers the funding for this very important project to be adequate at this point, and what importance his ministry intends to give to its deliberations.

This was not touched upon in the Solicitor General's address. However, there seems to be a growing concern over the role of private investigators in this province. Our friends from the third party raised a number of questions in the House regarding private investigators and security guards and people of that nature. We see the statute the Solicitor General now has to administer is primarily a licensing one. There is no attempt to create standards of competence, training guidelines, etc., of the same type as he has done for other paraprofessionals in the various fields.

We note the proposed legislation would extend coverage to burglar alarm agencies and security consultants, etc., but we must repeat we see a tremendous need at this point for uniformity of standards, for testing, for training and for having this group of auxiliary police, or quasi-police individuals, either eliminated completely or

brought into a framework of professional control and responsibility.

I am delighted the Solicitor General has taken steps under the Retail Business Holidays Act to clamp down on a thing which, for our urban centres particularly—in the Jane-Finch area which I happen to represent, as well as Dufferin Mall, etc.—had created a serious situation for our already depressed and hard-pressed shopkeepers. I am referring to the flea markets, in which prosecutions have recently been commenced through the intervention of the Solicitor General's staff. This is a very laudable initiative and it ought to be stepped up.

In most of our urban centres, we face a severe decline in the purchasing abilities of individuals. Shopkeepers are already finding it difficult to keep their doors open in any event, without having to engage in the Sunday competition of flea market operators who, for the most part, as I am sure the Solicitor General is aware, are no longer selling either used merchandise or handicrafts or things of that nature. They are now selling, for the most part, bankrupt stock or other items which would be available from the stores during normal business operations.

I have a few more comments, if time permits, on the question of computer crimes. This also was not addressed, but if we look at the newspaper reports, especially in the area of bank robberies involving computers or the use of computer facilities, one should ask the Solicitor General about what special police resources are being marshalled to prevent organized crime from once again getting a foothold in this important and now desirable field.

What number of specifically retrained intelligence officers are being deployed? What special training are they receiving? What efforts are being made at consultation with the federal counterpart to amend the Criminal Code to give some force to the law, to prevent this kind of trend?

I would also like to comment very briefly on the report of the Metro Toronto Task Force on the Racial and Ethnic Implications of Police Hiring, Promotion and Career Development, Dr. Reva Gerstein's report. I guess this was brought very forcefully to mind only a few months ago, when I and my wife had the distinct pleasure of being guests at the retirement party of Commissioner Graham. Needless to say, my wife and I found ourselves looking up most of the evening at some rather stout gentlemen.

It pointed up really the question of whether the Solicitor General is satisfied that height

requirements in both the Ontario Provincial Police and the Metro police force are such a major concern as they have been in the past and whether these now impede the participation of ethnic groups in the various forces.

11:40 a.m.

I was also amused to see, from a personal point of view, that under the Human Tissue Gift Act the Solicitor General has published a well thought-out document in Italian asking for our body or parts of it. One must muse to some extent whether similar pamphlets are proposed for other areas, especially in the areas of informing the various ethnic populations as to procedures for police complaints and the rights of individuals during investigation and impending arrest, or perhaps pamphlets in those languages outlining the operations of the Retail Business Holidays Act, etc. It seems to me we should be as ethnic in asking as we are in giving.

Basically, those are my comments, Mr. Chairman. I reserve during the vote further comments if they arise.

Mr. Chairman: That reservation, I take it, is the same reservation all members get?

Mr. Spensieri: Yes.

Mr. Chairman: Thank you, Mr. Spensieri.

Mr. Renwick: Mr. Chairman, I have a number of comments arising both out of the statement made by the Solicitor General and out of the point that was perhaps made indirectly by Mr. Brandt about the things we should not ask about, the areas of omissions from his statement, which are somewhat glaring. I would at least like to target some of the areas which were omitted from the statement so the minister and his advisers will know there will be matters to be raised on those issues as we progress through these estimates.

I would like, first of all, to say to the Solicitor General that possibly before we next meet to consider his estimates the deputy minister, Mr. John David Hilton, will have retired. I should not say retired; that is the point of my remarks. I wanted to say I believe, come June 1 next year, John David Hilton will have reached the age of 65 and, like myself, I would hope he would not consider retirement in any way from the service. I am not intruding on his personal plans in any way.

Mr. Breithaupt: His choice may be somewhat different to yours.

Mr. Renwick: I have known the deputy since long before he was the deputy. I would hazard a

guess that it was close to some 50 years ago when we first met. So I have had a long personal friendship with him as well as the association in his capacity as a devoted servant of Ontario.

I would just make the specific plea to the minister that whatever role Mr. Hilton may choose to play, his services not be lost to his ministry should he decide to retire or should the rules of the game require him to retire at June 1 next year.

I simply want to say how pleased I am that the Solicitor General is about to appoint a commission to deal with the question of high-rise fires. I need not say anything further about that, other than to expect that, as you have indicated in your statement, the terms of reference of that commission will be comprehensive and broad and all-embracing so that there will be a very significant contribution by that commission to the vexed question of all aspects of the hazard to people who enter any of the various high-rise buildings.

The next point I want to talk about, from ignorance, is the vexed question of statistics. I could not tell, from the references to the statistics on about pages 22 to 25 of your statement, whether you were speaking about Ontario Provincial Police statistics solely or whether you were talking about province-wide statistics in a number of areas. That is just a peripheral comment.

My basic concern about the statistics in the justice field as a whole is that they are so fragmented, so inadequate, that one cannot find what the statistics are supposed to illustrate other than very simplistic variations of increase or decrease in particular areas from year to year. That applies not only with respect to statistics related to highway traffic offences but it applies throughout the whole scope of the references to crime in the province. I find them just simply noncommunicative to me either about any significant value judgements or about bases on which one can make a value judgement.

I have always been concerned that the police report of statistics relate to charges as though in some way the quantity of charges laid in a particular field bore some aura of value about the work of the police. Clearly it should not be beyond the competence of yourself and your colleagues, and I am hopeful that this matter can be addressed, that not only should the police be interested in the number of charges laid but the outcome of those charges as they progress through the system.

What happens to the people who are charged? Are there more people discharged than are charged in the long run? What is the extent and degree of participation of the police in the prosecution? How good has the police work been with respect to the investigation and laying of charges?

All of these are questions which lead me to believe that until we understand the statistical basis of the operation of the justice system as such, from the time of original detention or apprehension until the final disposition of the case against a particular citizen in the province, we are not really going to understand whether or not the justice system is operating effectively and well.

I am not going to repeat what I said in the Correctional Services estimates and which I repeated briefly in the Justice Policy Field estimates, but we are spending more and more money on police. We have more and more police, we therefore have more and more charges laid; we therefore have more and more people who are sentenced by the court; we therefore have more and more people under various forms of surveillance by the corrections system of the province.

I do not know where that all ends. Certainly the deputy was in Vancouver when we were talking about the question of community service orders, and those were considered in the first instance as alternatives to forms of detention in institutions, but it certainly illustrates very clearly that whatever minor alleviation of the detention question community service orders provided, the net effect of it was to be an addition rather than an alternative.

The statistical question is of immense concern to me, both with respect to the work of your ministry and its correlation with the statistics of the other aspects of the justice system seen as a continuum, rather than a compartmentalized series of separate entities forming, in the whole, the justice system.

The next point I want to make—

Mr. Chairman: Mr. Renwick, might I apologize and interrupt you? Perhaps we could have a coffee break for three or four minutes?

Mr. Renwick: Certainly.

The committee recessed at 11:51 a.m.

12 noon

Mr. Chairman: Gentlemen, I see a quorum.

Mr. Renwick: Mr. Chairman, if I may continue, I listened with a great deal of interest to the comments by the Solicitor General on the

question of appointments to boards of police commissions.

I am rather concerned that he has dug himself into such an entrenched position in such a laconic way on two pages of his statement. I am sure he will be having a continuing dialogue on this whole topic over a considerable period of time, not necessarily with me, but with many people who are upset about it.

I just want to say to the Solicitor General—and I think this perhaps underlines something on which my friend, Mr. Spensieri, commented a few minutes ago about the role of the Solicitor General—that you cannot, sir, reserve to yourself and to the government the right to make those appointments without you accepting, fully, completely and without reservation, total responsibility for the civilian control of the police forces of this province.

I think that in the evolution of the Ministry of the Solicitor General it is a principle which has never been properly and adequately enunciated. It seems to always indicate that the Solicitor General sits in some rarefied atmosphere without any direct communication of responsibility; it is dispersed through organizations such as the local boards of police commissioners, through something called the Ontario Police Commission, and through the organization and structure of the Ontario Provincial Police.

You never get a clear recognition by the Solicitor General of his overall responsibility for the functioning of the police in this province, that he also must be charged with the failures throughout the police system.

It may well be that a decentralization, a relinquishment of the majority control of appointments over the boards of police commissioners, would effect that responsibility. I think it is at least a philosophical concept to be considered if any change were made. In the way you have expressed it today, you must accept complete and total responsibility.

I think it is fair to say that we as members of the assembly should be not inhibited in raising particular instances that come to our attention concerning activities of various police forces in the province which are at least questionable and which certainly require a response from you as we continue to go through the estimates.

I do not expect you to deal with it in your reply, but when we come to the appropriate point to deal with it in your estimates, I want to raise a concern I had about a radio report by Mr. McAuliffe of the CBC. I think he reported, on three mornings in a row, about a house in Milton

that was dismantled by hoodlums of one kind or another. Those were the terms that were used; the house was, for practical purposes, dismantled.

There were very conflicting statements made by the chief of the regional police of that area at that time. I would hope, during the course of dealing with it either under the police commission vote or at whatever point, you would let us know what the result of the report was. I assume you must have received the report about that particular incident.

Mr. Hilton: Could you let us know approximately when Mr. McAuliffe made the report? Was it a matter of months ago?

Mr. Renwick: I would assume that it was this year. It was a matter I had made a note of, but I do not have the note with me.

I now want to raise a concern of very great importance, because I have not raised it or made any public comment of any kind about it—not that anyone would necessarily pay attention to whether it was a public or a private comment of mine. It concerns the police role in the city of Toronto about 18 months ago on what have become known as the bathhouse raids.

The cases which came out of the charges laid have now, for all practical purposes, been dealt with or disposed of in one way or another. That is not a matter within your jurisdiction, Mr. Taylor.

However, at that time, there was considerable apprehension amongst the citizens of Toronto about the extent and degree of the force used and the numbers of police officers involved in carrying out those raids.

There was such an evident concern that it was stated that consideration would be given to a separate inquiry into the role of the police in those raids, which would involve not only the Ontario Police Commission itself, the chief of police and the officers who were responsible, but a complete investigation of the role of the police in those activities.

This would not be from the point of view of criticizing that particular past event, but for determining whether or not it was an appropriate police response, whatever the merits or demerits of the particular operation in which they were involved.

It was my understanding that statements were made, at about that time, that when the charges had been dealt with and the ends of the administration of justice had been served, the question

about an independent inquiry into that area would be looked at again.

I ask you, Mr. Taylor, to review those circumstances and to bring about such an inquiry at the appropriate time. If the time has not arrived, it is very close to arriving because of the final disposition in the courts of the cases which were involved in that matter.

I am not one who likes to go on escorted tours of areas under the ministry's control, but there are three or four areas in this that perhaps some of my colleagues on the committee might be very interested in.

One would be a tour of the Centre of Forensic Sciences; another, an inspection of that mobile unit you have developed for emergency purposes; a third would be the question of the OPP and police general communications network; and a fourth, subject to your judgement, Mr. Taylor, would perhaps be the fire marshal's college at Gravenhurst.

Hon. G. W. Taylor: The old or the new one?

Mr. Renwick: The new one.

Interjection.

Mr. Renwick: That is why I would defer to your judgement as to the last one.

Those are areas where I think my colleagues would be quite interested in having an overall view of those aspects of the work of your ministry.

Mr. Hilton: Pardon me, Mr. Renwick. The members of the committee had the opportunity to go down to Aylmer, did they not?

Hon. G. W. Taylor: It was the procedural affairs committee that had that opportunity.

Mr. Renwick: I see. I was asked but I was unable to go.

Mr. Hilton: I recall that some arrangements were made.

Mr. Renwick: I think the area of communications and the Centre of Forensic Sciences—and certainly that mobile command centre you have—would be matters that members of the committee would, I think, be interested in looking at.

12:10 p.m.

The minister may or may not be aware I had a continuing battle with the Attorney General (Mr. McMurtry)—at that time he was also the Solicitor General—on the question of the scope and function of the coroner as set out in the Coroners Act. The concise and precise point, if I can state it that way, is that the Coroners Act is independent of the question of police investiga-

tion, except for the provision contained in the Coroners Act that if charges are laid in any particular matter, a coroner's inquest can be delayed and then resumed at some subsequent date.

The Attorney General, and I believe both his advisers in his ministry and his advisers in your ministry, Mr. Taylor, have taken the view that, somehow or other, they are alternative processes; that if a situation is such that an inquest is called for under the Coroners Act but there is a police investigation taking place, there will be no coroner's inquest, even though the Coroners Act is a separate, clear and distinct statute.

That question has to be looked at very clearly. I happen to believe, as most lawyers do, that my opinion is better than the opposing opinion given on the matter. It is an area that requires discussion and concern.

There is no question whatsoever that the Coroners Act is quite peremptory about the terms and conditions under which an inquest should be called. I use the current example; while it was not mandatory under the Coroners Act with respect to the deaths at the Hospital for Sick Children, there is no question a coroner's inquest should have been called by the coroner presiding in the Metropolitan Toronto area for the purpose of that investigation.

Under that statute, when charges are laid there is provision for that coroner's inquest to be suspended until such time as those charges are dealt with. But the peremptory nature of the requirement of an inquest under that statute cannot be denied. There has been this strange interpretation that, somehow or other it is an alternative to be pursued only if and when the police investigation is either completed, or that investigation is somehow or other a substitute for the coroner's inquest.

That has to be reviewed, and very carefully, because I believe the action of the Attorney General was not in accordance with the law on one or two occasions which I drew to his attention at that time. I prefer to read history rather than either recite it or listen to it, so I am not going to review the details of the past instances.

An area which you did not touch upon at all, Mr. Taylor, except for one very brief reference, is the whole question of the relationship between the Ontario Provincial Police and the native peoples of northern Ontario, both on and off the reserves. At the appropriate time I would like to be brought totally and completely up to date

about the policing on and off the reserves in Ontario.

Another aspect of this ministry which has never been clearly delineated, although I think some steps have been taken in this direction, is the jurisdiction of the Ontario Provincial Police. It relates to a clarification of the jurisdiction of the Ontario Provincial Police relating on the one hand to the Royal Canadian Mounted Police, and on the other to the municipal police forces; also the relationship of the Ontario Provincial Police to other persons designated as peace officers in Ontario.

I come again to my point about the Solicitor General's responsibility. I happen to believe that, just as the Attorney General is responsible for the provision of all legal services within the ministries of the government, in a very real sense the Solicitor General should be responsible for all persons designated as peace officers in this province, even though they may not actually be members of police forces.

For example, I find it difficult to understand the relationship, except a hands-off one, between the OPP and the fish and game officers under the Ministry of Natural Resources who enforce a number of very important rights. They appear to operate entirely on their own in a ministry such as that one, which is very broad, with many functions. They are performing police functions which you have a responsibility to look into, without detracting at all from the responsibility of the Minister of Natural Resources in the cabinet system of government.

I am going to be raising with the Attorney General the whole question of native people's rights to fish and hunt. They are a shambles in this province at present, in respect to the knowledge of the native peoples and others as to the extent and degree of these rights. A great portion of that relates to charges laid by persons who are peace officers, but not police officers.

I believe, Mr. Taylor, your responsibilities should extend to each and every peace officer in the province, whether he is or is not a police officer in the technical sense of that term.

I am indebted to the vice-president and general counsel of Dow Chemical of Canada Ltd., Sarnia, for having sent on to me a complete statement which had been prepared for him, listing the rights of entry to private property contained in each and every statute of the province. This was when this matter and the right of entry of investigators under the Ontario Human Rights Code was in question and was commented upon in the press.

I sent this statement on to the Attorney General. He advised me he had sent it to each of his colleagues in the ministry because he found it would be of interest to them with respect to the various statutes.

It seems to me that is, again, an area which should be at least addressed by your ministry, because it is police officers, or peace officers in most instances, or persons having authority comparable to peace officers, who may exercise those rights of entry into premises in Ontario on private property. You should have a look at it. If that particular compendium is not immediately available to you, I would be pleased to send you a copy of it.

12:20 p.m.

I think the relationship between police officers and private property in Ontario, and the rights of entry to private property or private premises, is a matter of very direct concern to not only the functioning of the police on the one hand but the paramount right of the individual liberty of the subject on the other hand.

Hon. G. W. Taylor: If I might interject, I think similar comments have been put forward in regard to real estate. I think it was done by the Toronto Real Estate Board, and lists all those people who also can come upon your property, which is rather extensive. If you would not mind sending me a copy of it—

Mr. Renwick: It is quite an astonishing piece of work when you actually see it, as the number of statutes of this province have various variations on the theme about when, how and where this right can be exercised.

Hon. G. W. Taylor: Surveyors, fence viewers, elevator inspectors, health—

Mr. Spensieri: That would be Losing Ground.

Hon. G. W. Taylor: Losing Ground, that is the title of it. Losing Ground—I once had thought of doing a similar article.

Interjection: You think of your home as your castle.

Mr. Renwick: I will certainly send a copy on to Mr. Spensieri as well. I think he might be interested in looking at it. If you would like to see one, I—

Hon. G. W. Taylor: I have seen similar ones, whether it is the Dow one—I have seen some similar to this, but I would like to see the Dow one. I do not know whether it is the Dow one I have seen that is similar to this.

Mr. Renwick: That would be it. It was not issued by Dow, it was something that this

particular general counsel got interested in in his private capacity.

Mr. Brandt: For the record, Len Weldon was the individual who is the general solicitor and vice-president of Dow.

Mr. Renwick: Leonard Weldon, yes.

Mr. Brandt: I have this list as well. In my view it is most comprehensive. I share the concerns my colleague is articulating at this point, because it is a very comprehensive list.

Mr. Renwick: You would almost think it is a topic where a certain degree of standardization could take place after proper consideration of what the rights are, rather than having these multiple variations on the particular theme.

Mr. Hilton: Mr. Renwick, you alluded to my leaving. If we had the responsibility as broadly spread as you want to give us, I am going to be glad to go.

Mr. Renwick: I do not know whether you would be glad to go. I am trying to create a couple of jobs for you.

As Mr. Spensieri mentioned, my colleague, Mr. Mackenzie, has been raising questions from time to time with respect to security investigators, particularly with respect to the organization known as Securicor. I have asked him if he would, if his timetable permits at the appropriate time when we come to that vote, have an opportunity to come here, have an opportunity to participate in these estimates with you. I wanted to let you know I hope he will be able to come along.

The next question I would like to ask, and for which I expect a response at some appropriate time, is the position you have taken on the question of the amendments to the Criminal Code which are before Parliament. Certainly there has been tremendous activity by the chiefs of police with respect to the judgement of the Supreme Court of Canada on the soliciting question, in the field of prostitution, about changes in the code to overrule the judgement of the Supreme Court of Canada.

I was quite taken by the remark of the mayor of Vancouver on television the other day, that surely there should be "some place in between a wink and an armlock" on the question of persistent soliciting. The other rhyming couplet was, "Be discreet, keep off the street." That was the other item he contributed to the problem.

In any event, I would like to know whether or not your ministry has made any submissions on not only that particular topic but on any other of the proposed amendments to the Criminal Code.

I want to associate myself with my friend Mr. Spensieri's comments about the battered children or the question of child abuse. This matter was discussed somewhat briefly but directly with your colleague, the Provincial Secretary for Justice (Mr. Sterling), as to whether or not there was not some way in which a child abuse evidence kit could be developed.

It might be developed in such a way that among those who are in an investigative capacity—police forces, children's aid societies, doctors in hospitals and others who come in contact with injuries to children or other evidence that may tend towards a belief that a child has been abused—there is a co-ordinated response to let the public know generally that not only is child abuse not tolerated in the society, but that there is an appropriate and proper way in which the evidence about it could be assessed on any individual given case to see whether or not it would not assist in a very complex field in limiting the extent and degree of child abuse.

I think all of us who have been in public life are pretty much fed up, that the question appears to have a fashion cycle that rises and falls over a period of time when everyone knows that, whether it is fashionable or not, the incidents of child abuse do continue. It is interesting particularly because, as I understand it, there will be one of the committees of the assembly looking at the whole question of violence in the family for a couple of weeks this summer. I trust that this is an area where you, along with your colleagues in the Justice secretariat, would direct your attention and see whether or not we cannot, in a co-ordinated way, attack that particular question.

Apart altogether from the public inquiry you announced, we will be quite interested in the votes relating to the office of the fire marshal. I hope to have some comments at that time.

I have one or two reports and I have been concerned with the increase in the extent and degree of arson in the province and in the city, particularly in the area I represent, where I feel that there have been incidents which would lead me to believe arson had taken place. I want to indicate that I am quite interested in that particular topic.

You mentioned on a number of occasions your concern about drinking and driving and the problems that are involved in it. Both from personal experience and having observed others, I know that one of the areas of hazard on the highway, which has not yet subjected itself to scientific testing, is the morning-after syndrome

in connection with traffic accidents, where perhaps the breathalyser would not pick up the offence as one of being impaired through alcohol but there are significant post-prandial hours where I know that I have been a hazard—I no longer am—on the highway around seven or eight o'clock in the morning.

Mr. Brandt: Is that politically or with respect to your driving?

Mr. Renwick: I am going to keep up my driving. I think that is an area which has not been looked into. It came to my attention simply by a remark by—his name escapes me—the gentleman from the Centre of Forensic Sciences, who illustrated the breathalyser testing machine when that bill was before us about the so-called Christmas check.

12:30 p.m.

That is an area which should be looked at. It would deserve some attention with respect to an advertising campaign to people that they can be a hazard the morning after as well as the night before.

There was one other comment I wanted to make on the security question, apart from my colleague Mr. Mackenzie coming before you in the matters of specific concern to him. I have carried a file now for five or six years where there was a draft of a new security investigators' act. I cannot understand why it has been lost. I would like to know what your plans are in connection with that.

That leads to my next comment related to a remark you made in your opening statement about the review taking place of the Police Act. In a situation such as this, I find it extremely frustrating to be placed in the position where a bill such as that comes before this committee at a point where all the consultations have taken place, not in public but in private—quite bonafide, nothing wrong with it—with all the people who have an interest in that bill.

Then when it arrives after second reading before a committee such as this, we are told you cannot really make any changes because we have consulted with everybody interested in it and this is what we have agreed on. So you reduce this committee to a rubber-stamp role. I would just as soon have a bill such as that simply bypass the committee and go somewhere else.

There are bills where that is an appropriate process. The revision of the Mechanics' Lien Act, which just came through the House, is a complex statute dealing with very technical legal procedures and all of the rest of it. The

Attorney General (Mr. McMurtry), quite appropriately, said when he introduced it that amendments could not be permitted, so we are taking the position that that bill should go directly through to third reading and not pretend the committee has a role to play in connection with it. That is very technical and I have no problem with that kind of a bill.

We will at some point receive a Police Act where we in the committee can do nothing about it. I speak entirely in a nonpartisan way. All of the members of the committee from each of the parties are quite anxious to understand the legislation and to improve it if it is possible. I would urge, through whatever appropriate process, that we break a little new ground on the Police Act. When it is in a form to be circulated, either by way of a white paper or otherwise, you could table it in the House with the recommendation that it be referred by the House at the white paper stage to this committee. It could conduct public hearings on a matter relating very closely to the public citizen and to all of the institutions designed to serve the citizen about that Police Act. You referred to a white paper and you referred to an exposure draft of the bill, perhaps to be a part of that white paper.

It would be an immense step forward if this were the committee which held public hearings on that bill before it is introduced in the House for first reading. I think the House would accept a proposal by you when you presented the white paper, with a lot of background work done on it, to the assembly, to recommend that this committee be given the opportunity at the appropriate time to have adequate public input and to adequately consider the terms and provisions of it.

If I could move to another topic, I am extremely interested in these days of financial constraint in the extent and degree that fines imposed by the vigilant work in the highway traffic field and in other fields of the Ontario Provincial Police are collected. I adhere to the view, until someone tells me otherwise, that there is a significant amount of money owing to the government of Ontario through fines and that the procedures for the collection of those fines are rudimentary and inadequate. There is a tremendous backlog.

I would hope in times when those dollars are important the province would collect them. Particularly with the deterioration of the dollar, they would be worth a considerable amount more today than they might possibly be a year from today. I would hope I could interest you,

along with whomever your appropriate colleagues are, to deal with that question.

I would be interested in a specific statistic on seatbelt use enforcement by the OPP. I personally have never run across a single person since we passed that law who has been charged either municipally or by the OPP for failure to wear a seatbelt. I have heard of instances where there has been some other infraction of the law and the person is charged as an add-on offence with failure to use a seatbelt.

Mr. Brandt: For the record, I have been charged and I have paid the \$28 fine. I just wanted to clear that up. It was the OPP Petrolia detachment. I am not particularly proud of it, but it happened.

Mr. McLean: Now you are wearing your seatbelt?

Mr. Brandt: All the time, very religiously.

Mr. G. W. Taylor: We will have the minister turn his collar around for you and then you can confess all your other sins.

Mr. Brandt: I have not got the time. I apologize to my colleague for interjecting, but I did want to indicate I was one of those chosen few.

Mr. Spensieri: MPP plates notwithstanding.

Mr. Brandt: I was a mayor at the time.

Mr. G. W. Taylor: Mr. Renwick, I have been handed the statistic if you want it. In 1981 a total of 28,161 charges were laid by the force under the provisions of the Highway Traffic Act relating to seatbelts. This is approximately the same number of charges laid in 1980.

Mr. Renwick: That shows the law-abiding company I keep.

Mr. G. W. Taylor: Either that or they do not drive a car, or they are not telling you as Andy did. You do not have that confessor feature to your friends as you do for Andy.

Mr. Renwick: Mr. Spensieri spoke about the Charter of Rights. I am particularly interested in what the OPP is doing in relation to its recruitment policies and compliance with the Charter of Rights. I would hope the recruitment policies would correspond evenly and fairly with the various categories of persons the Ontario Human Rights Code is designed to protect against discrimination. I am also well aware of the concern the then deputy commissioner, now the commissioner of the Ontario Provincial Police, expressed during the hearings about recruitment policies.

12:40 p.m.

I think it is fair to say that no exception was made for the police forces in their recruitment policies. I would hope the OPP would develop a most progressive and positive response to the Ontario Human Rights Code in respect of its recruitment and hiring practices. I would specifically ask that the Ontario Police Commission direct its attention towards developing in its recruitment policies a framework for the guidance of other police commissions and police forces across the province, having in my case not so much regard to the Charter of Rights, because Mr. Spensieri very carefully spoke on that and I want to adopt his comments, but to the whole question of the Ontario Human Rights Code.

I do not believe for one single moment that every member of every police force in Ontario must reach some standard of physical and other fitness to be a member of a special weapons and tactical squad. Lots of police officers I have seen as attendants in the court might have a little difficulty performing those roles. I think an inflexible standard of something called an "ideal police officer" is not the kind of standard which should be used for recruitment policies, but should be used in order to relate the police to the kinds of communities they are designed to serve.

Mr. Hilton: Just in that regard, Mr. Renwick, at the convention of the Ontario chiefs of police last week, the day when the code became operative, a very articulate and knowledgeable young lady from the commission held a half-day discussion with the chiefs of police from throughout the province on the application of the code and how it must affect their recruiting situation, and there was much discussion.

Mr. Spensieri: That was Miss Pepino.

Mr. Hilton: No. She is on the Metropolitan Toronto police commission. This was a lawyer from the Ontario Human Rights Commission who was very instructive to all who were there; she was very good. There is a considerable interest in the whole police community on what they must do to be right.

Mr. Renwick: If she was speaking from a prepared text in those remarks, I would certainly be interested in having a copy of it.

Mr. Hilton: I think they asked her to do just

that so they could have it for their study and guidance.

Mr. Renwick: I am very pleased to hear that.

I did say that was my last remark. I do have one other comment. I have never been aware, and I certainly will be interested in asking the OPP, of its role in policing the navigable waters that are within the boundaries of Ontario. The only water police I am aware of are the Toronto Harbour Police, a force which will soon be amalgamated with that of the municipality of Metropolitan Toronto.

Mr. Chairman: Gentlemen, a couple of things. First, one thing Mr. Renwick brought up mentioned police commissions, municipal police commissions, etc. I am wondering what item and vote it came under. I am looking at vote 1703, item 1, Ontario Police Commission. Would that be the place appropriate for that?

Mr. Renwick: I think that would be appropriate.

Mr. Chairman: Good. Mr. Brandt has a number of questions he would like to ask. Do you want to ask them orally, or to put them in written form, Mr. Brandt?

Mr. Brandt: I would like to address them orally while the committee is sitting, but I would defer to the minister, if he wants to respond to the remarks—

Mr. Chairman: Certainly. He will respond, but I was trying to get a lineup of what you had in mind. Mr. Mitchell?

Mr. Mitchell: Mr. Chairman, while occupying the chair in your short absence I noted that the Solicitor General had been making a great many notes in trying to recognize the points being raised by the critics. I would suggest that because of the amount of response time required and so on, this might be an appropriate time to break so that when we resume we will be in one continuous flow in the response from the minister.

I think that would be an easier way for us to deal with it.

Mr. Chairman: What are your wishes, committee members?

Mr. Brandt: That is agreeable to me if it is agreeable to other members.

Mr. Chairman: Fine. We shall we adjourn to reconvene tomorrow following routine proceedings.

The committee adjourned at 12:46 p.m.

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Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, G. W.; Solicitor General (Simcoe Centre PC)
Treleaven, R. L.; Chairman (Oxford PC)

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

received by officers of the force was cabinet
approval for hiring 120 additional provincial



No. J-7

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice

Estimates, Ministry of the Solicitor General



Second Session, Thirty-Second Parliament

Thursday, June 24, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, June 24, 1982

The committee met at 3:42 p.m. in room 151.

ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL (continued)

The Vice-Chairman: It was my understanding the minister had completed his statement, the critics for both parties had finished their remarks and we had the minister's reply to the first item on today's business. So, Mr. Minister, if you would proceed with your reply.

Hon. G. W. Taylor: Thank you, Mr. Chairman and colleagues. I hope I can keep within a particular time frame, hit each subject or topic the Liberal critic, Mr. Spensieri, mentioned yesterday and then I will continue with those of the New Democratic Party critic, Mr. Renwick.

The first item Mr. Spensieri mentioned yesterday, hoping it was not going to continue that way, was my not being in the public spotlight the way the previous individual holding the portfolio was. This was in reference to the investigation at Sick Children's Hospital and that of the disposition of the criminal charges against Susan Nelles.

Looking at that from my position, as compared to how Mr. Spensieri viewed it, the areas of responsibility the Ministry of the Solicitor General had under its auspices were professionally handled, being both the initial investigation by the police and then the subsequent and coterminous involvement of the coroners and forensic laboratory. They performed their function professionally.

Having performed their tasks as they would in any criminal investigation or any coroner's investigation they then have the material reviewed by the Ministry of the Attorney General before any charges are proceeded with. There was a preliminary hearing and the end product of that would have been the disposition, which is still up to the Attorney General. It was the province of the Attorney General, not that of the Solicitor General, to comment on the disposition of those charges and anything flowing out of that.

The other aspect was the public inquiry commenced by the Ministry of Health, dealing particularly with the hospital. If any recommendations are received as a result of that public inquiry that may assist in the performance of the duties of the coroner or the relationship of the forensic laboratory, we would welcome those suggestions for improvement.

In conjunction with that I believe there was a comment made by Mr. Renwick on the coroner's role. I will come to that later, so I can do them in sequence. I think that situation was handled rather expertly and did not need any further position taken by the Solicitor General.

Similarly, Mr. Spensieri commented upon the police complaints role and the matter of, to put it in general terms, a raid on what has been described as a cottage in Scarborough. It becomes very difficult in the position of Solicitor General when the news media, not all of them but some of them, want instantaneous comment with an enormous amount of wisdom and an enormous amount of knowledgeable background information on something that is very urgent for them. They make the Solicitor General part of their news story by having him offering editorial comment. I am not saying this is characteristic of all media, but it is a method they use.

Often you do not have factual comment. I am not one for avoiding comment to the media. It is just that in some situations, knowing the position I hold, knowing what my comments might do in the long run, I often become most reluctant to comment. Eventually there could be an investigation under various pieces of legislation, perhaps the police complaints bill. Criminal charges may flow from a particular incident. There may be civil actions which may flow from the same set of facts. There may be professional bodies that may also have hearings.

Sometimes, with the very superficial amount of information one can receive from the media and the quickness of response they want from individuals, I am reluctant to comment too extensively—indeed sometimes to comment at all—for fear of what might be the long-range

problem with such a comment and how it may be used.

When these statutory bodies enter the picture, without trying to accommodate the news feature of the media I sometimes show a bit of what I call tact. I do not want to be quick with the lip and get in there for comment. One might equate that with silence. But I am not one to jump right in and get into the news immediately. I would let it develop.

No matter what the method of staff reporting to the minister, one cannot be any more instantaneous in affording very relevant comment other than, "Yes, I will look into it," or "I am receiving a report on it." The reports normally take some time to develop and to follow through on.

That is just by way of explanation. It may not be the best explanation and may not be the total explanation, but it is an explanation of a reluctance to jump in with both feet, foot-in-mouth, the whole package. So, if you will allow me that comment, then I will continue.

The Charter of Rights: what has been done? Basically, when the Charter of Rights was being developed, through the Ontario Police Commission and the staff of the Ontario Police Commission, a process was being developed; they were also watching it as it went along. When it became fact, the wording police officers would use when making an arrest came into being. The wording was developed, put on plasticized card, and distributed to all police forces.

3:50 p.m.

Along with that there was an educational program whereby different members of the Ontario Police Commission and also officers seconded from the different forces and from the Ontario Provincial Police went around and took a training package to the different police forces to explain it to them. There is also a more detailed training package being used at the Ontario Police College in Aylmer.

All of those programs have been carried out and the information will be disseminated and put forward for the training of police officers in regard to the Charter of Rights. At this stage, that has been taken care of, the initial part being the arrest and caution. Naturally there will be some further information and educational courses as the courts develop the position of the Charter of Rights.

You withdrew your next topic since I put the material in your hand—it had been riding in the

mail. That was in regard to the Gushie situation with the police in Peel region.

Another item you mentioned in connection with Peel region was regarding the car pound for the regional police force. I understand one Mr. Jack Lyons had operated the automobile pound for the Peel region force for many years but his latest tender, as you mentioned, was not accepted.

I have been informed by the Peel regional police force the matter has been forwarded to the regional solicitor because of comments made by some members of council. I believe the regional police are concerned enough about it to seek legal comment on it and they do not wish to comment further. So that is all the information I can give at this point on the pound licence situation in Peel. I believe the Peel regional board has five members on it, so they should be able to make a decision on the best way of carrying out their function of dealing with tow truck operators and pounds.

You mentioned particularly the emergency plans following the derailment situations in Medonte and in Mississauga. They have been dealt with by two methods. There is a draft bill that is just about ready concerning emergencies in the province. The Environmental Institute report, which came out in reply to the findings at Mississauga, our own Mississauga document, and the Grange report all made recommendations in regard to rail safety. Rail safety is, of course, under federal jurisdiction. They will be processing that further.

We also have our own legislation coming along in much the same field—the dangerous transportation of goods. It is emanating from the Ministry of Transportation and Communications. We will be following that along to devise the best legislation for the province.

In regard to response in emergencies, we will have the legislation coming forward. Section 7 of the proposed act deals specifically with nuclear contingencies, and mock nuclear disasters have been practised by the Ontario Provincial Police in co-ordination with the different nuclear establishments: Ontario Hydro, Bruce, Rolphon.

These are carried out and then assessments are made through our co-ordinator of emergency planning. It has received a very high level of support from the provincial government and also from the surrounding governments. By that I mean jurisdictions in the US—Michigan, Ohio and others.

Once when they carried out a mock situation

on the US side of the border, there was no facility for informing the Canadian side in Essex county. Our colleague, Mr. Mancini, brought that to our attention as did other people in the Essex area. Through our co-ordinator of emergency planning, that situation has now been rectified. If there is a border problem, indeed a nuclear situation on the other side of the border, our side is now tied into it.

The results of the mock disasters have been very beneficial to those who have to co-ordinate the efforts in that. By that, I mean the environment people, health people, police, firefighters and Ontario Hydro. All those emergency situations are tied in during these mock situations in regard to nuclear contingencies.

Mr. Hilton: You can also say there is a substantial degree of support and assistance from the municipal authorities involved.

Hon. G. W. Taylor: My deputy minister has also indicated there has been a great deal of support from the local municipal authorities. Indeed Essex county was very quick to recognize there was a deficiency in its system. It contacted our co-ordinator of emergency planning and corrected it. Provisional arrangements have been made with the states of New York, Ohio and Michigan to continue alerting those procedures. Also arrangements with Michigan have been tested and agreed upon. It is a continuous process to make sure we have a full-fledged emergency plan.

You mentioned high-speed chases in regard to police, and there have been guidelines prepared for these. The guidelines are very extensive. They are distributed to the different police forces.

A driver training course is being prepared for the fall at the Ontario Police College at Aylmer. It is the first of its kind in this country. Officers will be put through driving skills where they had not been before. Previously if you were a police officer, when you obtained your driver's licence you were probably instructed on this but the practical training was not available. That will now be available at the college. This program is put together by driving authorities through co-ordination with other police officers.

You mentioned good judgement in connection with the Ontario Police College notice "derelict in duty." I could not track down where you had obtained that—where an officer would be considered derelict in his duty if he did not carry out a police chase. I think you measured the words "good judgement." No matter how you read the guidelines, they always lead to the

conclusion an officer should use common sense, good judgement, in deciding whether to commence a chase, whether to continue one, and how to conduct a chase.

I have seen other comments on driver training courses where they indeed put them through what is called "close surveillance." Many things can happen psychologically when you put the lights and the sirens on. We are trying to measure those to obtain the maximum benefit for their driver education.

You were showing the deputy a guideline—

Mr. Spensieri: The guidelines I had were simply an Ontario Police Commission reminder circulated to the various police forces; an internal memorandum of November 1979.

4 p.m.

Mr. Hilton: There have been several since then.

Hon. G. W. Taylor: What I will do, Mr. Spensieri, is provide you with a copy of the guidelines.

Mr. Spensieri: Thank you. It is appreciated.

Mr. Hilton: Mr. Minister, as far as I know we have three sets of guidelines that have been upgraded with each recommendation that has come forward for consideration. We have obtained the guidelines produced by almost all of the United States and from all the other provinces. We have studied them all—

Mr. Spensieri: Could you ascertain whether this reminder, which I believe is going into effect, has ever been rescinded or otherwise modified? It seems to be an overall directive, which to my knowledge, and from our own research, has not as yet been supplanted or modified in any way. It would seem to almost frighten officers into a possible allegation of dereliction of duty if they did not give pursuit. It is very critical if this type of philosophy still prevails.

Hon. G. W. Taylor: The Ontario Police Commission also keeps very close watch on statistics of this—1982 guidelines supersede 1979 guidelines. You might have the 1979 guidelines but there are guidelines for 1982. The statistics are watched quite closely.

The Ottawa police recently stopped an automobile and quickly it led to finding out about three deaths in Toronto. Not all of the chases result in that type of close connection but a great proportion of them do. One cannot quickly come to a decision whether or not to—

Mr. Spensieri: I do not wish to belabour the point and I beg the indulgence of the Solicitor General. There can be as many updating guidelines as we wish, but if the central philosophy remains that a police officer still feels he may be in dereliction of duty if he does not give pursuit, then the whole point is lost in these discussions.

A restrictive model of police chases to be deployed throughout the province is ultimately what we would be arguing as a desirable development.

Mr. Hilton: May I assist you, Mr. Spensieri? In 1976, Chairman Tom Graham of the Ontario Police Commission issued guidelines. I am advised now that words similar to those you quote were in those guidelines. In 1982 the content of those guidelines, perhaps through this committee's process, were reviewed by the then Solicitor General, who was pretty upset about them. They were redrawn and reissued. So the old guidelines are now crossed out and have been supplanted by the new ones issued in 1982.

Mr. Renwick: Mr. Spensieri, could I just interject for a minute? Could we have copies of whatever up-to-date documents—

Hon. G. W. Taylor: Yes. I will get those to you, Mr. Renwick and Mr. Spensieri.

Mr. Renwick: I believe one of the two documents I have is the one to which Mr. Spensieri is referring, that is the high-speed pursuits memorandum of the then chairman, Mr. Graham of November 1, 1979. I have another document, operational procedure number 60, which was sent out in August 1977. We had operational procedure number 60, then there was the 1979 one and now there is the 1982 one?

Mr. Hilton: Now there is a 1982 version.

Mr. Renwick: Were there any significant changes?

Mr. Hilton: The portion which was just stated is not included now. The emphasis—

Hon. G. W. Taylor: When the clerk comes back, Mr. Renwick, we will get this one copied.

Mr. Spensieri: We realize they have introduced a skid training course, and so on. We were just wondering if the Solicitor General could update us as to whether any special vehicular adaptation or modification of existing vehicles is in the process. Will there be a number of vehicles specially adapted and others prohibited from engaging in speed chases, or this sort of distinction in equipment rather than—

Mr. Hilton: No. The equipment that is going to be used is equipment that has been supplied by the Ontario Provincial Police. It is equipment that has been used by that force.

Hon. G. W. Taylor: Which is standard equipment.

Mr. Hilton: Standard police equipment.

Mr. Spensieri: My question relating to the actual vehicle is: will there be vehicles specifically modified or adapted to engage in high-speed chases, as opposed to others which under no circumstances can ever engage in such chases?

Hon. G. W. Taylor: No—at least not at the Ontario Police College, as the deputy minister has said. We have been using the standard Ontario Provincial Police highway cruiser.

You mentioned arson, Mr. Spensieri. There was a seminar with the Canadian Insurance Bureau recently conducted through the Ontario fire marshal's office in the last two or three months. They got together with the insurance people, underwriters and people in the field of arson and exchanged—as they would at these seminars—their background information: how to make the public more aware of arson; how to recognize it; its cost.

Several other tests were being conducted in the forensic laboratory, under Mr. Lucas. Knowledge was updated and expanded on how to check for arson and how to obtain tests to indicate whether arson was the cause of a fire. They are trying to improve these procedures so that arson can be reduced.

I have a fairly lengthy answer on the cannabis and alcohol matter. You were wondering whether there was sufficient funding. In addition to the funding carried out in the alcohol and drug addiction hospital provided in the Ministry of Health, they are primarily reviewing different schemes and updating their knowledge in that field.

You were asking if there was a study with regard to traffic accidents. It has been the policy of the Centre of Forensic Sciences not to routinely examine specimens from drivers and pedestrians killed in traffic crashes related to cannabis except when specifically assigned funds for research on this subject were available. It does not do them routinely.

The centre's normal practice has been to examine for cannabis only when there was some investigative reason given by the investigator to believe it may have been used. The Traffic Injury Research Foundation of Canada is con-

ducting a study in conjunction with the chief coroner's office. There was a recent article in the news media on that. It was found that 12 per cent of the drivers and pedestrians killed had been using cannabis at some time during the two or three days prior to their death and that three per cent had detectable amounts in their blood, indicating they had been using it within a few hours of their death.

Since a vast majority of these also had significant quantities of alcohol in their blood, the basic conclusion of that study was that, relative to alcohol, cannabis did not appear to be a major problem in fatal traffic crashes.

In order to update the findings and to examine in more detail accidents involving drivers who had been using cannabis, another joint study involving the same organizations and funded by Health and Welfare Canada began on March 1, 1982. This study will again involve only drivers and pedestrians killed in traffic crashes and will cover a period of three years. The funding covered purchase of a \$16,000 piece of equipment to improve our capabilities for this analysis, the analytical supplies necessary for the analysis and the salary and benefits for one technician to carry it out.

The funding also covers part-time services for the clerk and the chief coroner's office to perform the necessary followup on investigations by the police and the coroner. The total funding for the three-year period for the ministry is approximately \$116,500. This amount is adequate for the purpose of the study, but if you really want to study, it could be said no amount of funds would be adequate. However, this is an indication of the funds now available to co-ordinate information on cannabis, alcohol and traffic accidents.

4:10 p.m.

On the matter of private investigators and security guards, you mentioned there is a licensing statute. However, there are no standards or guidelines. In the present legislation, the first stage is one of licensing and knowing who is operating in the field. The next stage would be developing draft legislation. This would deal with what you term the lack of standards—anybody can be a security guard.

The one example which comes to mind quickly is the problem at the Avion Motor Hotel where one of the security guards was carrying out a function that one might consider was not proper for a security guard, depending on how you look at the legal aspects of what they can be licensed for.

So those things give me concern as well. These firms are hiring people and possibly not explaining their duties fully. Then they get themselves into situations that were not considered to be part of their job description or terms of employment. When the new act is introduced, we hope to have something that might take care of some of these features.

Mr. Spensieri: Another example, Mr. Solicitor General, might be the near-arrest and detention functions performed by a number of security guards in some shoplifting or theft cases in major centres. Some of them detain suspects for a lengthy period of time and interrogate them while waiting for a police officer to take the charges. I am sure those of us who have practised as defence counsel have encountered many other dubious practices.

It seems to me they are performing functions akin to interrogation which normally goes on in a police station. They often are doing so with no background or preparation whatsoever, on behalf of the retailers.

Hon. G. W. Taylor: The retailer or their employer, whoever it might be. If they are in-house—when they are employees of the retailer—the act does not apply to them.

Mr. Spensieri: It is often a commercial service by the insurer of the retailer.

Hon. G. W. Taylor: The act would apply to those individuals. It does not apply to the in-house ones.

One other item you mentioned was the Retail Business Holidays Act. The Legislature, over a period of time, developed that act in a very difficult legislative area. We were mixing a little bit of employment legislation in terms of people liking to have a pause day, as it is referred to—a rest, or a shutdown day.

It was also legislated in regard to assisting people in their economic situation—big versus small. There was also a desire on behalf of labour unions and, in some situations, large retailers, to set out the type of work, the hours of work and so on.

Also there is the problem of various religions. We recognize there is a religious day to be set aside. The two major religions in Ontario at that time recognized those days as being Sunday, with the possibility of Saturday.

There could be public announcements by myself or by the Attorney General telling his crown officers to seek the maximum fine of \$1,000. In reply to questions in the Legislature I said we had been asking for the maximum fine

for Sunday opening by certain business establishments.

It does not take too much imagination to see that some business establishments were using the low fine as a type of licence to remain open. It is one of those pieces of legislation where you do need a great deal of co-operation from the retail businesses.

The exemptions worked to the advantage of those people who needed to be exempted. Let us call them the fresh vegetable people and the tourist trade business. There are provisions where, through local autonomy, some of that can be looked after.

I, like you, hope the active intervention and the knowledge that I have made statements, and have made requests of ministry staff through the necessary channels, have helped make people aware that law is in existence and that it should be enforced more strictly for all transgressions. I think that has been taken care of.

Moving on to your next topic, on the police: what are they doing about computer crime? This is one area where, even today, there is a lecture going on. The Ontario Provincial Police first became concerned about computer crime in about 1978 when they realized there was a significant potential for criminal manipulation of computer systems. That is recognized.

At that time, they began to search out specialized training courses and to develop research material on the topic of computer crime. The research demonstrated a significant difference between this type of crime and that with which policing agencies normally deal.

For example, it is possible for a computer to be manipulated from a location thousands of miles away. The police are powerless to prevent this type of crime. As well, it is not the type of crime normal police patrol activities would locate. The offence must be reported by the victim. Nevertheless, the Ontario Provincial Police continue to develop expertise in the area, sending men wherever they can, to be trained.

I have spoken on this topic, and so has Bob MacQuarrie, my parliamentary assistant, at seminars conducted in three areas of the province, Ottawa, London and Toronto. Businessmen were invited to participate in this OPP computer crime seminar. This exchange of information was developed in conjunction with the OPP.

We were brought in to assist some of the most knowledgeable individuals in the computer business from the commercial world, to develop this course; people from different accounting firms

and hardware firms. I think it was a success and brought a great deal of information and knowledge to the computer field.

I have here also the management computer course, Executive Guide to Computer Crime and Security. We have some extra copies available to show you the area in which the OPP have been working. I think Mr. Renwick would also be interested.

In May 1980 force representatives made a presentation to the cabinet committee on justice regarding computer crime. During that presentation they requested and were subsequently granted special funding to operate a series of computer crime conferences to educate the business community.

As preparatory work for the conferences, the force prepared and distributed a questionnaire to some 650 Ontario-based corporations. The questionnaire posed a series of questions relating to computer security and crime. Subsequent returns were used to analyse the needs of industries and to develop the conference format.

Conferences were held, as I mentioned, in London, Ottawa and Toronto, resulting in approximately 500 business executives being exposed to computer crime and security issues. Extensive media coverage of these events and other publicity efforts mounted by the force have resulted in a tremendous increase in the awareness in the business community of the need for security in computer systems.

The OPP are continuing efforts to raise awareness within the business community. Thus far in this calendar year force members have addressed over 20 business groups on the subject of computer crime. There is one going on at Computarama '82, a convention of the Data Processing and Management Association.

In terms of training the OPP has advanced significantly since 1978. Now almost 25 per cent of the anti-rackets members have some computer crime investigation and security training. The expertise of the personnel has been recognized by the federal government, which has invited the participation of the Ontario Provincial Police in the development of computer crime legislation.

4:20 p.m.

You have the guideline development there. That is what is presently taking place in regard to computer crime. In raising the issue, Mr. Spensieri, I am sure you know the Criminal Code does not take care of that area. Science

and technology are advancing faster than legislators can get around to it.

Mr. Spensieri: That was why I asked if co-ordinated efforts were being made.

The Vice-Chairman: Could I interject at this point? I know there were some guidelines distributed with respect to police pursuits. There is no date on them, but I noticed a date on the covering letter. Maybe the committee could be advised of that. I think it was some time in February. February 23, 1982.

Hon. G. W. Taylor: That is the date.

Mr. Renwick: I shall use that.

Mr. Spensieri: It is a leap year.

Hon. G. W. Taylor: Good memory. Stop reading my notes.

It went out to all chiefs of police and municipal governing authorities in Ontario from Shaun MacGrath, the chairman of the Ontario Police Commission, dated February 23, 1982.

The Vice-Chairman: This is to inform the committee of the date of the guidelines.

Hon. G. W. Taylor: You mentioned the Reva Gerstein report on racial and ethnic hiring. Who we hire is a major concern. One has to consider some of the documents we prepare through the ministry are printed in more than one language. That is a recognition of the particular areas of people we want to contact with the information.

If you look at some of the informational brochures, there is one where we are asking for a donation of tissue or organs; there is a pamphlet that outlines the police complaints procedure. That is printed in Italian as well as the other official languages. But the recruitment brochures, I understand, are printed only in English.

I know we seek out people from different origins. Growing up outside of Canada is no hindrance to their joining. Indeed, the new Human Rights Code, the Charter of Rights, all of those things, enhance that. One still has to recognize the functional working language of the major police forces happens to be English in certain areas of the province, just as the Ontario Provincial Police obtains people who speak and have a working ability in the French language.

I forget the total, but maybe someone here could assist as to the number of languages spoken. We try to obtain staff on the force with knowledge of different languages; at least I can say that with the Ontario provincial force. I am

sure the Metropolitan Toronto force would also have people of numerous linguistic skills.

I can give you one of these informational brochures. This one is for the OPP, and there are 32 different languages, from Burmese, Croatian, Czechoslovakian, Danish, Dutch, Estonian, Finnish, Flemish, French, Friesian, Gaelic, German, Hebrew, Hungarian, Italian, Japanese, Latvian, Lithuanian, Lebanese, Malaysian, Mohawk, Norwegian, Ojibway, Polish, Portuguese, Russian, Slovenian, Spanish, Ukrainian, Welsh and Yugoslavian, and sign language in English too.

There are 32 languages, and 734 different individuals make up that complement. That is just in the OPP, and I would suspect that if a survey was made of other forces, and particularly the metropolitan ones, the same type of information would be available.

I think your comments are well taken, Mr. Spensieri. We want to try to make improvements. The public should be receiving printed material in more than one language. That might be the best method of contacting them and making that information available.

I believe that took care of most of your questions. My notes now show Mr. Renwick on my chart, so I will move to his questions. I know you like collected material. James, but you were talking about "statistics gathered by the Solicitor General not viewed in relation to the justice system as a whole." I realize I did give you some statistics and anyone making a public address has to be careful of the statistics he uses.

I am sure you must have received this material, but if you have not we have some extra copies here. This documentation covers at least to 1980: Ontario Criminal Justice Terminology for Statistical Data and Information Systems, and Justice Statistics for Ontario, 1980. These are put out by the Provincial Secretary for Justice (Mr. Sterling).

I do not know whether they give what you might want to make use of, Mr. Renwick, but they are yours for the reading. If they do not put you to sleep, try Ulysses.

Mr. Renwick: If I have any questions or find any errors, I shall call you.

Hon. G. W. Taylor: I am sure.

Mr. Brandt: I wonder if Mr. Renwick could provide the other members with a short précis of those by tomorrow.

Hon. G. W. Taylor: But I recognize what he was saying.

I am trying to find out, after your comments

and after having put these statistics together, what happens to these people after their arrest. Is this the point you were trying to get us to? Let us use the example of someone being arrested for impaired driving. Did the police producing that statistic make that individual a better citizen and reduce that style of driving later on?

The statistics the Solicitor General's ministry groups together are only those of arrests, not convictions, not dealing with what took place with that individual after. I guess that is one thing that affects society as a whole, but the Provincial Secretariat for Justice brings those right through.

Other than trying to do case studies on individuals, I guess one can only try to analyse the statistics. Those will give the information on arrests, what took place with them and what happened right through the entire system. I am not sure one can say it will be an improvement for any particular individual; one hopes it will be, but I cannot say that.

In addition, there is a federal-provincial project. The Justice Policy secretariat and other justice ministries are reviewing the statistical data and other information which will be the input into the 1980 version of the justice statistics for Ontario. Now they are co-ordinating them with the federal government. I suspect the books will be even larger in 1982.

4:30 p.m.

Mr. Renwick: Could I perhaps just comment on your comment about it?

I have reviewed the question of statistics in Correctional Services, and I have also done so with the Provincial Secretariat for Justice. I am aware of the work that has been done. Indeed I would guess the deputy minister and the Provincial Secretary for Justice (Mr. Sterling) has contributed as much as anyone in Canada in trying to get some sense out of the world of statistics in this field.

On a previous occasion I obtained from him the way in which they believe police should record charges, starting from the initial investigation of a reported offence and then what they do with them. The problem is the gap between what is done by the police. They end up with "offences cleared by charge." In other words, so far as their statistics are concerned, if they have charged someone you can close the book on that offence for statistical purposes.

"Offences cleared otherwise" are those which after investigation police determine do not require any investigation, etc., and they develop certain clearance rates. But that does not in any

way tell whether or not the police are being competent and efficient in what they are doing until one looks at the end of the process to see what happened to all of the charges that have been laid and cleared off the police books.

It is a difficult question and I do not pretend that we have either the time or the energy to resolve it. I do think if one had to select anything that indicated the value of the provincial secretariat, it is the attempt to co-ordinate through the various ministries this statistical question. I know it is an ongoing process.

Hon. G. W. Taylor: And develop terminology too, Mr. Renwick.

Mr. Renwick: Common terminology—not only for anyone who is interested in the topic but a common terminology linking the various ministries that are engaged in this process from the inception of an offence to the end of the road with respect to it.

Mr. Hilton: You are quite right. Mr. Sinclair has been involved in this program perhaps more deeply than anyone else in the province. Indeed, he has acted as chairman of those seeking to co-ordinate this work from coast to coast.

The only way, from the statistics that have been produced by that federal—it is not really federal, it uses Statscan and federal authorities but it is an interprovincial operation—would be to look at several graphs. One would have to look at the charges, and not just the clearances but the convictions also. The conclusions you might come to would be of a very general nature.

Mr. Renwick: With great respect, I tend to think that the information provided is useless except as numbers. What conclusions one can draw from it are negligible.

Mr. Hilton: That has been widely discussed at the interprovincial level. We make a dollar contribution to it and we just wonder whether the dollars are being wisely spent.

Mr. Spensieri: Perhaps in a lighter vein I could say that our respective parties have solved the problem by having one critic for the entire justice policy field familiarize himself with all of the problems, from Correctional Services to—

Mr. Renwick: Mr. Spensieri and I will be glad to let you have the benefit of our ruminations on this question.

Mr. Spensieri: Collective wisdom.

Mr. Hilton: I think you should tell Mr. Sinclair.

Hon. G. W. Taylor: You mentioned the McAuliffe house, which you said was dismantled by hoodlums in Milton, I think, Mr. Renwick—

Mr. Hilton: Reported by McAuliffe.

Mr. Renwick: Mr. Gerald McAuliffe has returned to the CBC as an investigative reporter.

Hon. G. W. Taylor: The note I have is that the home was destroyed—

Mr. Renwick: Read that out loud, will you? A little louder?

Hon. G. W. Taylor: The note?

Mr. Renwick: What you are reading.

Hon. G. W. Taylor: I believe you said the home in Milton was described by someone else as being virtually destroyed by a group this past February. I believe the case was that a teenaged son was left in charge while his parents, the owners of the home, were in Florida. A party apparently got out of hand and after investigation by Halton regional police seven teenagers were charged with wilful damage as a result of the party.

I think that is what you were asking, what the result of the—

Mr. Renwick: No, I was specifically asking what went wrong with the administration of the police in that region that permitted that to occur that night.

Hon. G. W. Taylor: You have added one more feature—

Mr. Renwick: There were very confusing statements made by the chief of that force at the time. He contradicted himself and I think he said that he contradicted himself. I am not asking now for what I would—

Mr. Hilton: Would we not take this up in vote 1703?

Mr. Renwick: I would like to have the whole report of how that could take place in the town of Milton. For all practical purposes, the house was dismantled. I think the four walls were there, but it ceased to be habitable. The event took place over a period of time on that one particular night. There was a police response which, obviously, so far as public perception is concerned was totally inadequate.

It seemed to me to be shattering, in Ontario, that this kind of incident could take place without a full statement. I would like, in due course, to have a full statement. I would indeed appreciate it if, when you have looked into it, sir, you think it is worth asking the police

commission to prepare a report for you on that incident.

Hon. G. W. Taylor: I hope I will have that available during the Ontario Police Commission vote and get a further report.

Mr. Renwick: The descriptions on the Metro Morning show of what took place were quite frightening. Even the son of the family does not have the noblesse oblige to dismantle his parents' home.

Hon. G. W. Taylor: You were mentioning too, Mr. Renwick, about tours of the forensic science facilities, the Ontario Provincial Police mobile unit, the new Ontario Provincial Police and Ontario Police Commission communications network and the Ontario Fire College at Gravenhurst.

I must say we sort of ran out of time. I have had one group of members over to tour the Centre of Forensic Sciences. Mr. Lucas is only too willing to have the people go through the forensic sciences laboratory.

Indeed, when it was constructed it was designed for touring, with full explanation, while carrying out the day-to-day functions without hindrance to those functions.

Mr. Renwick: I recognize that problem.

Hon. G. W. Taylor: As I said, it was originally designed for tours while work could be in progress, it is set up for that. Many students go through: students in the elementary schools, students in secondary school and people in community colleges and universities who are interested in the field of forensic science.

Also, the Ontario Provincial Police mobile unit can be made available, as well as the communications network. I believe most of the people on the procedural affairs committee that studied the Ontario Police Commission this past year participated, including the Solicitor General. They toured the communications network of the Ontario Police Commission, the computer centre and had what was taking place thoroughly explained to them.

I believe one of your members, Mr. Breaugh, had his name put on the computer and came up clean. He was pleased to know that he had no outstanding records.

Mr. Spensieri: Until he brought the guns into the room.

Hon. G. W. Taylor: I think the Ministry of the Solicitor General and those people involved are quite proud of the facilities, as well as the people who work within those facilities and their knowledge. They are only too willing to explain fully

the procedures taking place in terms of the one communication feature we talked about, its security and integrity.

4:40 p.m.

Mr. Renwick: These things take a little forward planning and thought, so they are informative for our purposes.

Hon. G. W. Taylor: Yes.

Mr. Renwick: I think it would be helpful. I have added one mentally overnight; that is the emergency dugout up north, wherever it is.

Hon. G. W. Taylor: That takes a little more in that it is a federal operation.

Mr. Renwick: Is there not some place where the Premier (Mr. Davis) hides out during hard times?

Hon. G. W. Taylor: Yes. It is still a federal accommodation at Base Borden. It is not too secret. I come from Barrie, as you are aware. Everyone knows it is out there. The difficulty is getting in, not in discovering it is there; everyone knows where it is.

Mr. Mitchell: The PWO you are talking about.

Hon. G. W. Taylor: It is operated by the federal government. Indeed, I did visit there with the Premier earlier this year. Believe it or not, I had to have a federal security check.

Mr. Renwick: It is not idle curiosity. You are introducing new legislation about emergency matters. Subject to them being cleared, I think it would be valuable if members of this committee had an opportunity to see what is provided for the protection of the government.

Mr. Hilton: There may be some difficulty in that, Mr. Renwick. We have had certain difficulties in getting clearances for staff people, because they will also have to assist the government. It is perceived, under that program of the federal government, that the Premier is not there as Premier of the province. War having been declared, the emergency situation is really in the hands of an agent of the federal government with local responsibility for a particular area. They look upon it as their place, their security; we are entirely in their hands.

Mr. Spensieri: We will put in a good word for you.

Mr. Renwick: Without getting into the particular theory that the federal government may have about how they are going to carry out the administration of the country in war time—and I could argue with them about that—the fact is

that members of this assembly should have some knowledge of what the process is for the protection of the government of Ontario in the event of emergency situations.

Hon. G. W. Taylor: That is only war emergency. It does not function in other than a war emergency. We do have, though, at the Ontario Provincial Police headquarters, the civil emergency—

Mr. Renwick: And there is a Metro—

Hon. G. W. Taylor: And probably a Metro—

Mr. Hilton: I understand there is one in Thornhill or Richmond Hill, somewhere like that.

Hon. G. W. Taylor: I am sure they have never opposed taking honourable members to show them the facilities operated at the Ontario Provincial Police headquarters; that goes along with what I mentioned to Mr. Spensieri earlier on the nuclear contingency plan with regard to Bruce, Rolphoton, or any of those, and other civil peacetime measures.

I have the strangest feeling that the one at Base Borden, if you went there, the list is very selective. If on notice of war there had to be a distance travelled, the cameras rolling on the individuals going in would give you a great deal of reluctance to proceed in there, knowing full well that those on the outside might not be there when you got out.

It would be interesting to see who really would take up the challenge of going inside.

Mr. Renwick: I would be a bit concerned, from the way you have described it, that the people who are supposed to get in there would not get in when the time came because of the Royal Canadian Mounted Police security process.

Hon. G. W. Taylor: There was some comment made that the Premier was informed that only he would go in and not his wife. He informed those present, including myself, that there would undoubtedly be a very quick cabinet shuffle. I was responsible for carrying around the Bible in case that shuffle was necessary and Cathy Davis would have a new post instantaneously, suddenly, if he happened still to be Premier and happened to be going in.

Mr. Renwick: My God, if he takes all his family in there, there would be no one else there.

Hon. G. W. Taylor: However, it was a very interesting trip and, as I say, he was saying that

in jest. I hope, as we all do, we never have to use it.

Mr. Renwick: After the McDonald commission I doubt very much if I would get a security clearance to get in there.

Hon. G. W. Taylor: I am sure if I passed, Jim, you will.

Status of Indian policing was another subject you mentioned, Mr. Renwick. There is a procedure to evaluate the Indian policing program and it is now being developed in conjunction with the government of Canada. We could consider the details of that program under vote 1705, the provincial police.

From the information I have received in regard to the Indian policing program the Ontario Provincial Police have developed, it is an improvement over what was previously there. There have been some good learning experiences developed as a result of the program, but that does not mean it cannot be improved further.

I think that is what is going to take place with the commencing federal—

Mr. Renwick: May I say just on that topic that it is an area I am interested in. I find I am likely out of date. The document I have was the original agreement of July 18, 1975. It was a document for a three-year term, subject to being renewed. There have been two since the actual agreement.

When we come to vote 1705, I would like to have a copy of the agreement as it is presently in force.

Hon. G. W. Taylor: That could be easily arranged.

Mr. Renwick: I also believe that, subject to the demands around here, my colleague, Mr. Johnston, the member for Scarborough West, would like to have a brief dialogue with you on one or two matters affecting the facilities in northwestern Ontario—I should not say the facilities, but the police operation in northwestern Ontario as it affects native children.

Mr. Hilton: I have visited the northeastern patrol. That is up at James Bay and Hudson Bay, Fort Albany, and all through there.

Hon. G. W. Taylor: Do you want to visit those too? I hear Mr. McLean wants to take a visit up that route too. Once you get up to the top of the route, on which I understand you have to go—

Mr. Renwick: I do not want to visit it.

Hon. G. W. Taylor: —some time this sum-

mer, they use very small airplanes, not large passenger airplanes. The seating is very limited.

Mr. Hilton: I can tell you there are miles and miles of nothing.

Hon. G. W. Taylor: If there is a vacant spot, I am sure we will find one for you, Mr. McLean.

Speaking of other police forces and northern ones, you were asking for a clarification of the relationship between the Ontario Provincial Police, the Royal Canadian Mounted Police, municipal police forces and peace officers.

In regard to peace officers, we try, where possible, to make training available. Individuals of the Ministry of Natural Resources are trained at the police college at Aylmer through the co-operation of the Ontario Police Commission. The environmental inspectors also go through some form of training and education there.

There are some personnel who do not receive training. We are trying to have, and hopefully will have, training for the humane society inspectors. Nursing home inspectors receive training, arson inspectors, ambulance service investigators, security commission investigators, Ministry of Agriculture and Food investigators, Ministry of Labour investigators—they do not all have the status of police officers, but we have different courses available at the Ontario Police College to instruct those individuals.

The ones who do not receive training—and staff may correct me if I am wrong—are the sheriff's officers. They do not receive training through the Ontario Police College.

4:50 p.m.

There may be, as you are aware, Mr. Renwick, some peace officers with that status who I am not aware of who do not receive training. They too give me concern, as they do you, that they would carry out certain functions and not have some of the background information police officers receive through their educational process.

In the relationship of the Ontario Provincial Police, the RCMP and the municipal forces there are some situations where the co-operation is extensive, as in the use of computers and exchange of background information on different things. The Criminal Intelligence Service of Ontario, the Canadian Police Information Centre are useful for exchanges since members of the different forces are seconded for criminal investigation. In joint force operations it is the same thing.

VIP security is basically left to the RCMP, although we often assist in joint endeavours,

such as the international economic event we had in Ottawa. There were advisers in Hull and Quebec, the Ontario Provincial Police and municipal forces were down there. So there is a great deal of transfer of information and co-operation between the forces and hopefully that will continue.

The difficulty we have is in trying to segregate some of those situations where the RCMP are involved to say, "These are the statutes you enforce." You have seen how it happens; they go through the courts and they do the prosecutions, etc. in that field. So there is some type of segregation of work that is exclusive to this province, since the provincial forces other than in Ontario or Quebec are contract RCMP forces.

Mr. Renwick: I do not anticipate discussing that area in the short time we have in your estimates, but my concern is there has never been a rationalization of the relationship of the RCMP with the role of Solicitor General here, in my view.

I happen to have the view, without advocating the disunity of Canada that the Solicitor General here should know of every activity being carried on in Ontario by the Royal Canadian Mounted Police. Starting from that premise, I know what will immediately be stated is that the security work of the RCMP is not to be disclosed to anyone, it is the responsibility of the government of Canada, even though one cannot find anything, either in the Constitution or in any statute, that provides for the security work of the RCMP. They seem to have it from some historic right.

I have never understood, although it has grown like Topsy, why certain statutes of the federal government are the responsibility of the RCMP and certain other statutes are not.

The body of the criminal law, the Criminal Code by and large, is the responsibility of the police forces in Ontario and not the Royal Canadian Mounted Police, but there are other criminal law statutes of the federal government which are the preserve of the RCMP.

Hon. G. W. Taylor: Narcotics.

Mr. Renwick: Particularly narcotics.

Hon. G. W. Taylor: Migratory Birds Act.

Mr. Renwick: Yes, and a number of other—pardon?

The Vice-Chairman: The Combines Act; unemployment insurance.

Mr. Renwick: As well, I suppose in a real sense the jurisdiction of the OPP in relation to

municipal police forces is, for practical purposes, a geographic one. Where the OPP is operating in a particular municipality it is by virtue of an agreement with the municipality in the organized parts of Ontario.

I am not asking specifically for any change, but I think the relationship, unless delineated and rationalized, will raise serious problems, as it has raised serious problems in the past, with respect to the activities of the Royal Canadian Mounted Police in Ontario in this nebulous world of so-called security work and the alleged breaches of the Criminal Code by the RCMP officers in their particular version of protecting the integrity of Canada.

Mr. Hilton: I might say, Mr. Renwick, for the past five years that I have had a responsibility in this area this has been a constant matter of concern to the incumbents of the Solicitor General's position. What we may insist upon and what we may get may be two entirely different things.

We are continually watching what we consider the incursions of that force into what is traditionally and contended to be the jurisdiction of Ontario.

The RCMP is a fine force and do a good job and no one seeks to deprecate them and the work they do, but we do have a constitutional responsibility for the administration of justice that is vested in the province and we seek to maintain that.

I am afraid it gets confused in the other jurisdictions, as the minister has said, where they have a contract right of provincial policing and they are not required in their day-to-day work in their administration of the situation to mentally make that difference and they do not. So they assume responsibilities and they are being continually reminded that they are assuming responsibilities that perhaps they should not.

On the other hand, as the minister pointed out, we do have valuable joint force operations where we make use of their money, their equipment and their manpower to assist us in areas of policing; it may be in a municipality plagued with a particular criminal problem which may transcend with its tentacles just the municipality. Their co-operation and their assistance, the working together of the relative police forces, has been of great value.

It is a delicate path to tread, to keep that co-operative spirit and at the same time say, "You stay on one side of the line and we stay on the other." But I can assure you, sir, that it is a

matter that has not passed without comment and without a great deal of concern.

Mr. Renwick: From my point of view anyway, it would be extremely important that the rationalization of the relationship of this province, the Solicitor General basically and the federal government, with respect to the roles of the police forces in Ontario as distinct from the RCMP, should be the subject matter of at least a memorandum of understanding of the roles; or what would be much more preferable an actual agreement with respect to what the roles are.

Mr. Hilton: We tried to get that at many dominion-provincial conferences, because it is not only the concern of the Solicitor General in this province; the Solicitor General of Alberta is in the same relative position as ourselves. The Attorneys General in all the provinces are greatly concerned about the responsibility of the RCMP as the contract force to report crime in their province to them rather than taking it straight to Ottawa, which they do.

I do not think, in the five years I have been here—and there is usually a dominion-provincial conference in which we were involved at least twice a year—that that has failed to be on the agenda at any one time; it is always there.

5 p.m.

The progress that has been made in those five years. I can tell you, is just about goose egg. I do not think you are going to get any agreement, nor are you going to get anything signed, but we would love to have it.

Mr. Renwick: I would think it should be a top priority, and that pending such an agreement, when the minister attends the fortress on Jarvis Street for the mess dinner of the officers of the Royal Canadian Mounted Police in Ontario, you might raise it with the ranking RCMP officer here that you, sir, have a responsibility to know what in hell they are doing.

Hon. G. W. Taylor: I shall.

Mr. Renwick: I would not want you to spoil your dinner, but—

Hon. G. W. Taylor: It will be a year from now, since I missed the last mess dinner. I will not tell you how I missed it, but I did.

Mr. Renwick: You probably could not get in the fortress.

Hon. G. W. Taylor: No, I was not dressed properly to get in the fortress.

Mr. Renwick: Oh, without a uniform.

Hon. G. W. Taylor: It was very formal.

Mr. Renwick: I shall lend you my lounging pyjamas.

Hon. G. W. Taylor: Anyway, I should return next year and it will be the 161st anniversary of the RCMP.

Mr. Hilton: The power does not lie in Bud Howe to grant us what you ask, that comes from much higher up.

Mr. Renwick: I understand that, but it would not hurt the Solicitor General to dress him down and tell him in no uncertain terms that he, the Solicitor General, runs the administration of justice in Ontario so far as the police are concerned and the local RCMP head does not.

It is a very serious problem. You do not have to be around too long to know you are in trouble if the relative jurisdictional lines of various organizations are not clearly delineated so that people understand what their mutual responsibilities, rights and duties are. However, I have dwelt on it too long.

Hon. G. W. Taylor: You mentioned that your colleague, Mr. Mackenzie, will be in in regard to the private investigators act, under that vote and Securicor—

Mr. Renwick: Which vote is that?

Hon. G. W. Taylor: That would be under the Ontario Provincial Police. It is in the last vote.

Mr. Renwick: He will not be able to be here until next Wednesday morning.

Hon. G. W. Taylor: The only difficulty I will have is that since there is still an ongoing investigation I cannot comment on some of it. Also, the Ontario Labour Relations Board hearings will be coming up and the amount of the investigation material is extensive. Some of it is being reviewed by the legal branch of the Ministry of the Solicitor General with regard to any actions that have been taken as to the private investigation security legislation.

If something were going to be done with it, it would then naturally be passed through to the law officers of the crown at the Attorney General's office; but it is ongoing, and with a number of companies and activities the research has been extensive.

Mr. Renwick, you mentioned child abuse.

Mr. Renwick: Just before we leave the security guard question, what are your intentions about legislation in that area?

Hon. G. W. Taylor: We do have the legislation in draft form. You were mentioning how we had dealt with some piece of legislation. I sent

that out to some people. I think it has been introduced once or maybe twice before.

Mr. Renwick: Yes, that was quite a few years ago.

Hon. G. W. Taylor: Hopefully I will bring it on again.

Strange as it may seem, we do not have a lot of legal draftsmen. We have John Ritchie in our ministry, an excellent solicitor who reviews pieces of legislation. They go through the process of going over to the drafting people in the legislative counsel's office, then coming back with many associations wanting to make comments. It has been introduced for first reading, for comment; it has been around the Horn in that way on more than one occasion I guess. Of course each time it goes out more comments are returned. I have received further comments since I mentioned that it may be introduced.

With the more recent activity of Securicor, I believe the leader of your party and other people have suggested some changes in that style of legislation. You deposit all this with a fellow by the name of John Ritchie, who tries to work those words, thoughts or philosophies into the existing legislation.

That is being done. As you know, with our legislative time, there are some other priorities. We hope to get around to introducing it in the fall.

Mr. Renwick: I would hope you were prepared to get on with it because it is a matter that really needs to be dealt with.

I have this article of November 22, 1980, by Jack Cahill of the Toronto Star, a very distinguished journalist. In it, he quotes the superintendent of the Ontario Provincial Police—whose job was to deal with this matter—as saying, "Really all that is required before a man gets a licence to guard other people's property is that he is a warm body."

I am not suggesting this is all that is required. However, with the numbers of the intrusions by private police forces, as distinct from the public police forces, it is time we had a clear, cold look at the question of security of private property. The private operation has encroached a great deal upon what was traditionally a public police function.

Even the question of the uniforms has been an obvious and outstanding problem. People are confusing the authority of people in uniforms with that of police officers, particularly at dusk or in the evening and so on. All the parapherna-

lia that goes with it is only one important, but minor, part of the overall problem.

I was most anxious that we get on with it when the bills were introduced. I tried to do some preparatory work on it because of my interest in it. Then I find it has sort of gone flat. I think it should be put quite high up on the priority list of the legislative work of your ministry.

Hon. G. W. Taylor: We now have only two pieces of legislation being developed. One concerns emergencies and the other the private investigators legislation. We hope the emergency one will be put out for discussion this spring, providing it passes what are considered the internal hurdles. Then the other one will be put forth in the fall.

The other topic you mentioned, Mr. Renwick, was that of child abuse. The ministry official, Ron Kendrick—who is the police liaison coordinator with the ministry, seconded from the OPP—and Gordon Hampson of the Ontario Police Commission are working with the Ministry of Community and Social Services to develop a handbook on child abuse for police officers.

As you mentioned, it might be a child abuse kit. We have developed what I guess can be described, through the coroner's operation, as a rape kit. This child abuse one would be much similar but only for use by the police.

Mr. Hilton: The coroners use it.

Hon. G. W. Taylor: The forensic lab uses the rape kit. Again, that is to assist the police in putting together standard form evidence.

I suspect you also want more of an educational facility to assist police officers in recognizing child abuse and then trying to bring it to the attention of someone who would prevent it from continuing. At least, the child should be taken out of a situation where he or she was in harm's way. I would hope the book being developed for the Ministry of Community and Social Services would create that information for police officers.

5:10 p.m.

Again, whenever one of these situations develops, it is worked on and blended in with the courses at the Ontario Police College. I think, from the information I have received, they do an exceedingly good job of working that material in.

I listened earlier to Mr. Spensieri when he talked about Reva Gerstein. The material from that study goes immediately through the advisory council to the Ontario Police College and is then worked into the ongoing courses. One

hopes that, without detracting from some of these knowledgeable police officers, they gain further knowledge on how to carry out their functions.

Mr. Hilton: They do have a problem with the doctor-patient relationship and the confidentiality of that.

Hon. G. W. Taylor: As to arson in Riverdale, I am sure you were not concerned with arson specifically in Riverdale but with arson generally. You were asking about the statistics.

Of course, they are not readily available—the Ontario fire marshal does not keep them in regard to ridings. However, in 1979 there were 2,473 structural fires in Toronto, costing \$7,612,293. This included 424 arson fires costing \$1,632,618.

In 1980, there were 3,170 structural fires in Toronto, costing \$15,488,919. This included 416 arson fires costing \$9,166,685. There were three major arson fires that year, which raised the dollar amount considerably.

If you looked at these statistics you would say, as I have, “Aha, there is a decrease in arson fires from 424 to 416.” However, the dollar figure is an enormous increase. When one says they have reduced the arson fires, you can quickly point to the dollar figure and show the damage cost has gone up. So, in 1981, there were again 2,997 structural fires in Toronto, costing \$11,253,157. This includes 462 arson fires costing \$3,933,506.

The arson fires are remaining relatively constant, but the dollar figure fluctuates rather widely. I guess, like you, I have a concern—as I mentioned to Mr. Spensieri—to make sure people are aware of fires, to make it more difficult to set an arson fire without its detection through forensic knowledge.

Thus, I want to make it less palatable for people to set arson fires by making it known that, yes, they can be detected more and more and that it is not a way of relieving one from economic burdens. I guess that today, with our economic situation, arson naturally increases.

The detection of it, and subsequent prosecutions—both through forensic ability and, more specifically, police methods—will reduce the number of arsons.

On another item of yours, we have not collected any statistics on the hangover after the night before.

Interjection.

Hon. G. W. Taylor: Did you say that Andy Brandt wants to do a study on it?

Mr. Mitchell: Yes.

Mr. Brandt: Yes.

Hon. G. W. Taylor: The Centre of Forensic Sciences informs me they are not aware of any studies done on the effect of alcohol-induced hangovers on driving.

“While it seems reasonable to believe that a headache and the general malaise associated with a hangover would reduce to some extent the alertness required for safe driving, whether this would extend to the point of a measurable impairment and whether it would be different from the decreased alertness that might be caused by, for example, influenza, is not known.”

I am not giving you anything new there. “One of the reasons this has not been studied is undoubtedly because of the difficulty in objectively diagnosing the condition in subjects for testing. It would be difficult to develop an educational program on this subject because of the absence of any reliable factual data.” But one must be concerned because friends tell me there is still an enormous problem the day after.

Mr. Hilton: Mr. Renwick, the minister cannot comment on this from personal experience but I can. As I grow older I can comment on it less and less, thank God, because I have developed an immunity and I do not have hangovers.

Hon. G. W. Taylor: The Police Act is being reviewed. There is a committee within the ministry chaired by John Ritchie. He has discussed the matter with those people who would bring their concerns to him and would treat any new matter on the Police Act and the Fire Marshals Act the same way. It would go out to the police associations and then he would discuss it with the Ontario chiefs of police and their associations.

Those have been the two major components, and indeed as you have said there has not been a general consultative process. Ontario associations and municipalities were upset because they were not brought in on the initial discussions. It is a matter of developing the particular piece of legislation as you go along.

First, we receive comments regularly from many bodies, groups and individuals. Then we get to know our present legislation is not up to a standard, so we start working from that information. It is ongoing all the time, and there is a file kept of comments which come from all the different sources on the legislation.

John Ritchie then starts developing it. There

is no method of one piece of legislation following a particular course as compared to another. When it is developed and they have taken care of those two major concerns, the management one and the association one, the Association of Municipalities of Ontario will then be brought in.

It will then be produced, I hope, in the form of a draft and a white paper for further discussion before it proceeds. We have received comments from different members already—the parliamentary assistant, for example, has certain feelings about the Fire Marshals Act and has submitted suggestions, as have other members from time to time. I have, naturally, passed those on to the council drafting the legislation.

I hope both the Fire Marshals Act and the Police Act amendments will come out in the form of a white paper, because it is a major piece of legislation and should not proceed in any other way. Hopefully your suggestion is not that destructive, changing the feature of putting it to a committee before.

Mr. Renwick: As a white paper.

Hon. G. W. Taylor: As a white paper for discussion; that is not as offensive to the parliamentary process of bringing in people before it moves to the next stage. Somebody might get two bites of the apple that way, and it is to be hoped the best piece of legislation is produced as a result of that. That is the situation now and the two major groups and AMO are working on it.

Mr. Spensieri: Same as the budgetary process.

Hon. G. W. Taylor: Yes, that is the philosophical topic of another day.

Proportion of fines for tickets issued by the Ontario Provincial Police that remain unpaid: if it is not already in that material, we will try to develop some statistics on that. It might be in that justice thing, but as you are probably aware the collection of fines goes into the consolidated revenue fund. The new plate-to-owner legislation is being developed by the Ministry of Transportation and Communications and when that is fully developed, one cannot obtain his new licence plates if there are any unpaid fines.

5:20 p.m.

That may reduce the amount of unpaid fines outstanding. I know that was your concern: those who follow the rules of society conscientiously and pay their fines compared with those who do not and just maybe ignore them. So possibly that may answer your question. In the

long run, I do not know the amount outstanding that might be labelled Ontario Provincial Police as such. I shall try and see whether we can get that information for you.

You asked about seatbelt legislation and we gave you that information yesterday—although you have a note on here “revised.” Does that mean it has been revised from yesterday?

Interjection.

Hon. G. W. Taylor: I just gave you Ontario Provincial Police figures yesterday, Mr. Renwick. There happened to be 16,909 seatbelt charges laid by municipal forces between January and May 1982. So that is an indication of what municipal forces are doing. The then Solicitor General, Roy McMurtry, had a seatbelt seminar in Toronto and he reminded the chiefs of their responsibility of the safety functions and all those features. He promoted the use of seatbelts. I have not got any other figures which might reflect the increased numbers other than those between January and May.

Mr. Hilton: That was also done by correspondence—a letter was circulated asking the various forces, through the Ontario Police Commission, to be vigilant in relation to breaches of the law related to seatbelts.

Hon. G. W. Taylor: Your last question, Mr. Renwick, was on the Ontario Police Commission and how it should develop its revised recruitment guidelines in light of the new human rights legislation.

Both the Human Rights Code legislation and the Charter of Rights are coming in. They kind of mix in together at different points, but during 1981 the Ontario Police Commission modified recruitment and other forms to comply with the current requirements under the Human Rights Code.

All changes developed were satisfactory to the commissioners of the Ontario Human Rights Commission. They were passed to them for discussion, review and comment. However, the human rights statute will make a further review necessary and naturally that is now under way. There has been discussion by me publicly and by the Ontario police chiefs.

You heard the deputy minister comment to you yesterday about a guest speaker at the convention the Ontario police chiefs had in Windsor. He mentioned the concern the Charter of Rights and the Ontario Human Rights Code might give. I have commented publicly about the difficulty of the recruitment situation, particularly with the individual who has had a

criminal record and what you do once that criminal record is expunged, as it can be today.

Can you devise exceptions, if exceptions are needed or wanted, to screen out that individual from eventually becoming a law enforcement officer? Do you do it restrictively—if you can obtain that information, which at present is contrary to the Human Rights Code? If there happened to be an exemption, which ones do you exclude? Do you exclude the impaired driver or do you say, for example, the more heinous crimes?

That is being reviewed and developed. I think it is giving some police forces concern as to the type of individual who could or could not be refused under the present rights legislation. I think it is a point that will have to be developed with great caution, because the people who have introduced the rights code have done it knowing that was in their minds when they introduced the code in Ontario and the Charter of Rights in Ottawa.

I welcome any insight or comment you might have on it. I know it is still in the discussion stage. One of the human rights people, I think, has indicated his attitude with the words—not to me but to others—"Trust us, we will do a good job on it. It is to be hoped they will.

I think that covers most of the remarks and questions from Mr. Spensieri and Mr. Renwick.

The Vice-Chairman: This might be the appropriate time for the committee to break in its consideration of the estimates. I know the chairman wants to bring in the committee's budget report.

Mr. Renwick: Could my colleague, Mr. Johnston, raise briefly—I mentioned, a few minutes ago, the question of his concern about native children and your action with regard—

The Vice-Chairman: As long as it is very brief. We are due back in the House soon, and we have our budget to do.

Mr. R. F. Johnston: Information has come to my attention that in the northwest part of the province—in the Patricia district, in places like Sioux Lookout, Dryden, Ignace, Pickle Lake and Red Lake—there are no juvenile detention observation assessment areas, the nearest one being Kenora.

It has been the case, on a not irregular basis, for juveniles to be taken into custody in an adult lockup situation, often with no charges being laid. It could be for something like drunkenness or various kinds of misbehaviour, some of which may need social service assistance, and others

may just be a case of an infringement on the local peace and order of communities.

I am finding it difficult to ascertain how often this happens. A lot of the information I am getting is pretty anecdotal. I was wondering if you have any information from the Ontario Provincial Police in that area as to the numbers of juveniles, especially native children in this case, who go through that experience of actually being in an adult lockup in some of those communities. The concerns I have are obvious.

There were major moves in the province in the last number of years to make sure this does not occur and that there are separate facilities available. The obvious problems in places like Pickle Lake are the size of the community and that sort of thing.

Hon. G. W. Taylor: There are no other facilities. In a lot of our areas, the detachment buildings themselves would have lockups; some capable of handling maybe six, some maybe four, some two, some individual cells. Sometimes they are segregated with regard to men and women, but not all buildings are the same. We will try to provide you with that information.

Mr. R. F. Johnston: Some of the figures I have—

Hon. G. W. Taylor: They would have an occurrence book that would register that. Whether it would register all of them in regard to age is another question. Usually, that is one of the items that appears on some reports.

We also have the problem that the Young Offenders Act is now up to a very high age, so that they are going to be mixed again. It has been a cause of concern to the justice policy field and to the ministers in that field, particularly the Minister of Correctional Services (Mr. Leluk).

We share some of your concern. We will try to produce that information for you.

Mr. R. F. Johnston: Just anecdotally, some of the figures I have were as high as 20 in Sioux Lookout over the year and 12 or so in Pickle Lake over the year. In Red Lake, the response was that they would not even hazard a guess because there were so many. As you say, the situation is a fairly confused one. There are many instances in which it is a whole family who are all in together, and in other cases young people are mixed in with adults who have been involved in violent situations in the community.

5:30 p.m.

Hon. G. W. Taylor: I do not claim to be an authority on the total area, but sometimes the Ontario Provincial Police detachment building is the sole representation of any form of government in the area. It is the only place they can be put. I hope the officers involved will take the tenderness of the years into consideration.

Mr. R. F. Johnston: I would like the information primarily because, when I have it, I would like to write to the Minister of Community and Social Services (Mr. Drea) and talk to him about appropriate kinds of programming and facilities that should be available for juveniles. It is one thing at Pickle Lake, but Sioux Lookout, Red Lake and Dryden are larger communities. If it is happening there—and I am not sure because it has been difficult to get the information—some steps could be taken by the Ministry of Community and Social Services to meet that, espe-

cially in anticipation of the juvenile criminal changes coming up.

Mr. Hilton: Mr. Johnston, in the facilities available in those areas where the native constables do the policing—Fort Albany, Winisk, these sort of places—life is a little primitive, a little raw, a little rough. In many of these places the liaison officers have no place to stay; they bunk in where they can. I went up there and viewed these places. The concepts we have down here cannot relate entirely to up there. We would like them to, but—

Mr. R. F. Johnston: You would have to be extremely adaptable.

The committee moved to other business at 5:37 p.m.

The committee adjourned at 5:44 p.m.

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From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Solicitor General



Ontario, LEGISLATIVE ASSEMBLY

No. J-8

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Solicitor General



Second Session, Thirty-Second Parliament
Friday, June 25, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, June 25, 1982

The committee met at 11:33 a.m. in room 151.

ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

(continued)

Mr. Chairman: Gentlemen, I see a quorum. We are recommencing the Solicitor General's estimates. We have five hours and 48 minutes left, and I believe the minister has a few comments to end his reply.

Hon. G. W. Taylor: Thank you, Mr. Chairman. It will be very easy.

Mr. Renwick asked for a copy of the agreements between the Indian association, the government of Ontario and the government of Canada. I have 12 copies of those which can be distributed to the members.

One other point, because it appears in today's edition of the Toronto Star, concerns the picture of the new style holster under the name "gunslinger style holsters." I do not prefer that name at all, nor do the police officers using them.

I believe the chairman mentioned to you that he has seen a demonstration of the Boss Rogers style holster. The Ontario Police Commission, through the officers of the Ontario Provincial Police, can provide a demonstration of the holster to the committee members if they so desire. I believe the earliest date available would be Wednesday of next week, if the committee were interested in seeing the demonstration.

They can see what is being used and why; why there may be some changes as a result of the safety features of the new holster—safety both for the officer and for the public—as compared to the present style holster.

I will also give you that news article and maybe the committee can decide whether or not it will take the offer of seeing the demonstration.

There was a question on native children and unpaid fines. We are still researching that question as to the lockups and the use of them, and the unpaid fines. When I receive that information, I shall pass it on.

That is all, Mr. Chairman.

Mr. Chairman: Gentlemen, before we carry on, can we have some understanding? Could we advise the minister as to whether we wish to have a demonstration of the safety holster?

I might say personally that I think you would all be missing something if you did not. I had a demonstration from my local police association in Woodstock and found it extremely enlightening. I started out with a bias against an open holster and within seconds they had me totally reversed.

Mr. Spensieri: They were not acting in the course of their duties, Mr. Chairman, I hope.

Mr. Chairman: No, they were not. That is what the minister suggests. Any two officers can provide the demonstration in a very small place; that is all they need. Does that seem reasonable?

Mr. Brandt: Mr. Chairman, I have a question in regard to the use of these particular holsters. Is it the intention of the Solicitor General that they be mandatory equipment for the police, or will it be a permissive thing, in your view?

I ask the question because, in the past, there have been dictates brought down by the Solicitor General's ministry indicating certain changes in equipment. I would just caution you that there is a tremendous cost ramification that trickles down to the local police forces.

As an example, I can recall being on a commission when handguns were changed, and the type of accompanying equipment that was appropriate. It was a very high-priced item. That is why I raised the question.

Hon. G. W. Taylor: Yes, we are aware of that. Like some of the other features; when you talk about dress, there is a standardization of dress and sometimes that means saying, "This is the style of uniform to wear."

This, like the soft body armour, will be optional for the forces to go to. There will be the necessity of making some amendments to the Police Act to make it possible to use that style of holster, but it will not be compulsory. It will be up to the individual forces to decide on their own equipment.

Yes, there is a difference in the cost of the new style holster as compared to the present style being used. That will also be a determining

factor as to whether some of the forces take up the opportunity when the new style holster is proven for use.

Mr. Brandt: You are making it very clear that it is going to be the option of a local commission and department to make that decision as to whether or not they want to make a change?

Hon. G. W. Taylor: Yes, it will be optional for the local department. When you see the demonstration, you will see the style of equipment. They will indicate to you the costs at that time and the necessary rearrangement of the existing equipment that may be modified to take the new style holster.

Also, it will probably be suggested that you buy completely new equipment, which I think is certainly correct. You would need a combination of a new belt and holster.

Mr. Hilton: At the moment, regulations require a closed holster carried on the weak side. It would mean nothing more than the removal of that requirement and the setting of certain safety standards, which any holster would have to come up to.

Hon. G. W. Taylor: I was questioned by the news media today. The Ontario Provincial Police and other forces are experimenting with them. Someone suggested that an officer was seen using one in Ontario Place and, yes, that is the place where they are being experimented with.

There has always been the suggestion that a view of the butt of a gun is offensive to the public. Even the most unsophisticated individual would know that there would have to be a gun carried even in the present "unsecured" holster, as it has been referred to by those who are touting the secured holster.

On vote 1701, ministry administration program; item 1, main office:

Mr. Chairman: Gentlemen, are there any questions or comments with regard to vote 1701?

11:40 a.m.

Mr. Renwick: I was hoping to defer to Mr. Brandt, who had some questions he wanted to raise. I had two matters I wanted to comment on under this vote, which I had raised in my remarks.

Mr. Chairman: They are under this vote, are they?

Mr. Renwick: Yes, they are basic policy questions.

Mr. Chairman: I think Mr. Brandt has broken up his statements under the various votes and items, so would you carry on? This is really part of your opening statement, or let us call it supplementary to your original comments. Is that fair enough?

Mr. Renwick: Yes. I just want to register, without going into it at any great length, my very real concern with the entrenched position the minister took on the question of the control by the province of the boards of police commissioners, particularly, and I speak always only with any knowledge of the particular world I come from—

Mr. Chairman: Excuse me, Mr. Renwick. Did we not decide that this was going to be under vote 1703, item 1? I know that I specifically asked, "Is it agreed that a discussion of that will come under the Ontario Police Commission?"

Mr. Renwick: I am very easy if we can discuss it there. It is the minister I want to address, not the Ontario Police Commission. It is a policy question of the government of Ontario, but I am quite prepared to leave it to that vote if you want me to.

Mr. Chairman: I would rather, because others may wish input on that. I was particular about that.

Mr. Renwick: I do not want to quote the whole of it, but I trust the minister will refresh his mind on the report of the Royal Commission on Metropolitan Toronto—of which the Honourable Mr. John Robarts was the royal commissioner—on pages 276 to 279.

That position is one which has my support, and is the view I have taken with respect to the composition of the Metropolitan Toronto Police Commission—not the composition in the numerical sense, but the composition of the board with respect to its functioning, responsibilities, and how it should be dealt with in Metropolitan Toronto.

I think it is an exceedingly fine recommendation, and I would not want to think the Solicitor General had overlooked it.

The other point is a policy point to which the minister did not respond. That deals with my concern, now that the charges have for practical purposes been disposed of, with respect to the raids on the Toronto bathhouses in February 1981.

I had asked the Solicitor General whether or not, in view of his predecessor's comments on this issue, he would now independently and objectively review the circumstances surrounding

those raids, to determine whether it is now not appropriate that there be a public inquiry into the actions of the police on those occasions.

In your consideration, I would refer you to only three matters. First of all, there is the letter to your predecessor, the Honourable Roy McMurtry, of February 9, 1981, from the Canadian Civil Liberties Association, Alan Borovoy being the general counsel to that organization.

Then there is the response of February 12, 1981, by your predecessor to that request for an independent inquiry. Then there is his last paragraph, in which your predecessor, although he signed it in his capacity as Attorney General—it is a Solicitor General's matter—said:

"For reasons which I trust will be apparent from the above, we are not aware of any information at this time that would warrant a public inquiry. It should be emphasized once again that the issues which are of concern to the public will be aired in the trials of the charges currently before the court."

When he said he was not aware of any information at that time, it can only be read in reference to the earlier part of his letter in which he states:

"I am unable to respond as substantively as I otherwise would. To the extent that I am limited in my ability to answer I must ask you and other concerned citizens to await the public disclosure of the evidence relevant to the charges that have been laid that will appear upon the trial or other disposition of the charges in court."

Then he goes on, "On the basis of the information which has been made available to me, I am not satisfied that there has been an accurate reporting of these events by the media . . ." etc. That is the second document I would like you to review in your consideration of it.

The third document would be the submission made on February 24, 1981, by the Canadian Civil Liberties Association, in further response by a delegation which waited on him. The delegation was composed of Professor Harry W. Arthurs, June Callwood, Professor Mary Eberts, Professor Donald Smiley, Terry Meagher and Douglas Trowell, all members of the executive or board of directors of the Canadian Civil Liberties Association. They were repeating their request for an independent inquiry.

The last item I would like you to review is the report on the police raids submitted to the Toronto City Council at its meeting on February 26, 1981, which was prepared at the request of aldermen David White and Pat Sheppard.

From what I can glean from the press over the long period of time these cases have been before the courts, and not at this time knowing the exact status of it, I believe there is no doubt the extent of the police involvement in those raids still raises matters of significant public concern.

I think it would be a most appropriate step for you to take. It is not sought in the sense there will be some pillorying of the police. It is an attempt to allay the concerns of the public about the massive demonstration of the police force on that occasion.

Many statements were made during the course of that time, both by members of the Metropolitan Toronto Board of Police Commissioners, members of the public and members of the police force itself, which require careful examination in a public forum. This is so that the reputation of the police, as well as its responsibilities in such circumstances, can be clearly enunciated and put before the public.

I am not asking you to accede to my request today. I did want, however, to draw your attention to the kind of information—there was much more information at that time—in the media. I trust you would consider their reporting upon these matters in your usual objective way in deciding a public inquiry should be held under the chairmanship of one of the distinguished judges of the high court.

Mr. Chairman: Do you wish to reply to that, Mr. Minister?

Hon. G. W. Taylor: Just that I will review the document Mr. Renwick has asked me to look at. I will make no commitment at this time. Somebody else had the portfolio at the time. I know there was correspondence on the matter. Some of the matters are still before the courts, I believe, in civil capacities, but the criminal features of it, or the Attorney General's side, has been finished. I understand there have been civil actions commenced against the chief of the Metropolitan Toronto police force, so I will give those matters consideration.

I do not know whether Mr. Renwick has a philosophy on the position of the Solicitor General. I have not quite formulated that in my mind yet, how far down the ministerial responsibility extends to each and every action of the police and police officers. I know there are intermediate steps whereby investigations take place and disciplinary matters are heard. When I firm up that position both in law and in parliamentary approach, one may be able to answer your question more specifically. That type of hearing may be independent of that

position of the minister depending on how far ministerial responsibility extends.

However I would be pleased to review those materials for Mr. Renwick and come to some conclusion.

Mr. Chairman: Thank you, Mr. Minister. Are there any other comments with regard to vote 1701? There being none, shall vote 1701 item 1 carry?

Item 1 agreed to.

Items 2 to 8, inclusive, agreed to.

Mr. Chairman: Shall vote 1701 in its entirety carry?

Mr. Renwick: Were you speaking of the minister's salary there, and the parliamentary assistant's salary?

Mr. Chairman: Those have "S"s beside them, Mr. Renwick. We do not really deal with the "S"s.

Mr. Renwick: No, we do not.

Mr. Brandt: Surely you were looking to increase them.

Vote 1701 agreed to.

On vote 1702, public safety program; item 1, program management:

Mr. Chairman: Any questions, comments? If there are none, shall vote 1702, item 1 carry?

Mr. Renwick: I am content—assuming the minister is going to treat his emergency powers legislation as a priority to lead the discussion of the questions of public safety, and that, in its broad sense, the program management sense—until we have that bill before the assembly.

11:50 a.m.

I assume that is the kind of bill that will come out to this committee and we can have a useful talk about public safety in its broad sense at that time. So I have no comment on item 1 of vote 1702.

Mr. Brandt: It is not unusual in the discussion on these items that the chair show a little bit of latitude with respect to the questions raised. In some instances they may not fall specifically under one of the items, but generally under the category that is under discussion. If you will accept that as your interpretation I would like to raise a couple of questions under this vote.

One of them deals with a situation the members may be interested in hearing about that involved my own riding. A decision was made by the Solicitor General's office with respect to determining the quality and standard of police vehicles.

The problem, in part, came about as a result of the decision of Sarnia township. I am looking at this under public safety, because I do not know under what category, looking through the entire book, it would fall.

Hon. G. W. Taylor: Ontario Police Commission, vote 1703.

Mr. Brandt: I could set that aside for another item if you tell me which one to discuss it under. I could pursue another one, then, that I believe is in this category under fire safety services, which is item 3 of vote 1702.

Mr. Chairman: Could I carry items 1 and 2 first?

Mr. Brandt: That is the very rigidity I was hoping to avoid, Mr. Chairman. If we do it on a line-by-line basis, it makes it extremely awkward.

Mr. Chairman: The standing orders—now if the committee—

Mr. Brandt: If we get an agreement from the committee, and I do not see any particular opposition from any of the parties to that format. I have sat in on the estimates of other ministries and quite frankly we do not do it with quite that narrow a focus.

Mr. Chairman: With the history of the justice committee over the last 16 months, being very strict in our items has often been the only way we could keep our sanity. However, if it is noncontentious and nonpartisan, then unless somebody objects, let us warrant it.

Mr. Brandt: That certainly goes without saying, Mr. Chairman.

Mr. Chairman: Carry on, Mr. Brandt.

Mr. Brandt: These questions are an honest search for information, sir. I am only raising them under this area because it appears they most appropriately drop into this category of the vote.

On the question of the fire safety services, the minister did discuss at some length the kind of services available in the fire schools that have been established for municipal fire-fighting forces. I have some concerns I would like to raise at this time with respect to a different type of fire-fighting. Primarily one, I suppose the minister would recall, which involved your ministry almost from the very first days you took over your present responsibilities. I am speaking of the train derailment of a number of chemicals in the northern part of the province. The Mississauga train incident is another one of a similar type.

I have some concerns about the capacity, the

knowledge and the ability of municipal fire-fighting forces to handle that kind of fire. I realize the type of instruction, the type of information and education these fire-fighting forces are getting now is in great part limited to typical municipal fires, buildings or conventional fires, as they may be called.

With the proliferation of chemicals on the market, with the number of train derailments and tank truck accidents that have occurred both in and out of cities—I can think of a situation that occurred where the entire downtown section of the town of Aylmer, as an example, was potentially going to go up in flames as a result of a collision between a tank truck carrying a volatile chemical and another vehicle.

I want to register a very serious concern about the capacity of municipal fire-fighting forces to respond to those kinds of fires. They are relatively new by their very nature in that, by and large, municipal fire-fighting forces are dealing with chemicals they cannot even identify, let alone have any knowledge of how to respond to them in terms of the appropriate type of fire-fighting apparatus or chemical that should be used.

I raise the question in part, because in my own municipality, we have a chemical fire-fighting school which was originally set up in concert between the municipality of Sarnia and the petrochemical companies centred in the Sarnia area. To the best of my knowledge there are only two schools of this type in North America. There is one in the Gulf coast area, which is the centre of the petrochemical area in the United States, and there is now one that has been established just outside of Sarnia in my own municipality.

My question is, and it is one I feel strongly should be pursued: Is there a method by which the ministry might look favourably upon municipal fire-fighters receiving some additional instruction from this kind of institution which is set up to assist in handling chemical fires particularly?

12 noon

That would run the range of anything from what happens in the plant to the tank cars or the tank trains I talked about earlier. The school is there, it is in place, they have people who are knowledgeable about this type of fire in particular, and I think there is an opportunity, if the ministry would look at it, for municipal firefighters to receive a kind of instruction they do not get at present.

When the minister is able, and can tour the

Sarnia area, I would be most happy to take him on a tour of this fire school. I believe it is a missing element within the instruction the municipal firefighters are receiving at the moment.

If there is a catastrophic kind of situation that is going to arise at some time in some of our municipalities, I can assure you the chances are extremely high it will surround a chemical fire of some kind. They are the most uncontrollable types of fires, and the ones we have the least amount of information on.

I would rather we be prepared well in advance than after the fact. I am just recommending that something be done to open the lines of communication to see if we could provide this kind of education for firefighters in Ontario. Do you have any thoughts on the matter?

Hon. G. W. Taylor: Yes. I thought you were going to ask me if I have an answer to it rather than do I have any thoughts on it.

Mr. Brandt: There was a question in there somewhere.

Hon. G. W. Taylor: It has been my concern, as you mentioned, primarily because of how I got my baptism under fire in the Medonte situation. It was really a chemical fire and unlike your community, where people had some training, it was new to some of the people. The fire took place in an unequipped area, where the chief was a volunteer chief, yet they turned out superbly.

There are different operations that assist on this. One is through the federal government. The provincial government has emergency set-ups for it. The federal government has a group called Canutec where if it is a chemical fire you phone and check the type of chemicals so as to decide how to fight or what to do.

In that situation, as the companies in your area have, they have chemical fire fighting teams which are notified immediately of a chemical fire or spill. They are at the scene to provide the people with that knowledge. In regard to the Ontario Fire College, there are six nonspecific courses. Again, it is the numbers that have to attend.

The transportation of dangerous goods, Bill C-18, was given third reading in a federal piece of legislation on July 16, 1980. That was the delivery of hazardous and dangerous goods by modes of transport. The regulations have not yet been passed on that, but we have courses in regard to that. If I can use the figures set out for me here, six staff members have become instructors and are certified by Transport Canada and

the remaining staff are scheduled to attend this special course by the end of 1982. These are staff with the Ontario Fire Marshal's office.

There have been six training courses dealing with the transportation of dangerous goods in 1981. The courses were conducted in Chatham, Timmins, Lindsay, Vaughan, St. Catharines and Sault Ste. Marie with attendance of some 231 students.

There has also been an arrangement through a co-ordinator of emergency planning, to have eight individuals go to the Canadian school on emergency planning near Ottawa. Rather than some of the other courses to be taken, they opted this year for a course on the transportation of dangerous goods, which falls into the category you are talking about. In the transportation of dangerous goods you can very easily see it could turn from a fire to a chemical spill situation and a possible spread of toxic gas. Our usual quota at that school is three, but we had some very fine negotiations and raised our quota to eight for the forthcoming term.

I am sure the offer you have made will be taken up by many officers allowing them to train at those schools. It could be arranged through the Office of the Ontario Fire Marshal. The fire marshal would be more than happy to participate with people attending those schools.

It is a matter of arranging for one member of the Ontario Fire Marshal's staff to take time off work. Similarly, officers from the different forces would be more inclined to want that type of information, possibly on the major transportation routes of chemicals, or chemicals within their own jurisdictions.

I think all the things you have mentioned are very necessary, and I would like my assistant deputy minister, Frank Wilson, to comment further on what has taken place in the field of chemical fires. We have the Ontario Fire Marshal here, if you would like further information from him on that subject.

Mr. Brandt: I wonder if there is one more supplementary question I might raise. Perhaps he could include this in his comments. A question I would like to raise is with regard to the practical firefighting experience that might be included in those courses you mentioned. I think the opportunity presents itself rather uniquely, in the fire school I am talking about, to actually get involved in fighting a fire in a tank car or in a situation that would be very similar to the actual experience a fire fighter would be faced with in an actual chemical fire.

This is far different from a schoolroom,

academic kind of course-related session which I do not believe is quite as valuable as the on-the-job training they receive under the conditions I am trying to describe for you. If there is a way in which that is being taught at the moment, I suppose I could rest my case.

I am not trying to promote the use of the school, which is running at capacity nearly all the time. People come from all over North America to attend it; it has become very popular and quite well known because of the high profile chemical fires are receiving right across North America.

These train derailments are going on, certainly not daily, but very frequently in the United States as well as in Canada. Usually they are extremely sensitive, because of the types of chemicals that are involved. Did the courses you talked about involve any practical training and experience?

Hon. G. W. Taylor: The courses at the Ontario Fire College in Gravenhurst have mock-ups and buildings where they can train. As well as the textbook part of their information, they also receive practical training.

I was sorry, when you indicated to me an opportunity to see the school earlier; the Legislature continued a little longer than necessary and I could not get down there to see what you said existed in Sarnia for the training of chemical people.

I recall again a conversation I had with the people from Allied Chemical on the Medonte situation, where they go through certain mock rehearsals, demonstrations of a nonpractical nature and textbook learning. I recall a conversation one of their chief fire fighters had with chemical experts. When they received the call that Sunday morning they explained to him the different features of that occurrence. There was a hydrofluoric tank car, a hydrochloric car, an isopropyl car and a number of other products all mixed in together. The textbook did not have that answer. He had not run up against that before. There was an initial quandary as to what to do. It was probably a larger problem than they had ever considered.

I think your proposition of giving them that opportunity to go through an existing chemical situation is a good one. They can even learn the construction of tank cars and be reminded there are many varying styles of tank cars used to transport dangerous chemicals, both on road and on rail.

Even the construction of the vessels was covered. We had experts attend at that situation

as they did in Mississauga, to provide detailed, expert information as to style and construction: what the tank cars will withstand in the way of damage by force, heat, cold or water; how much pressure they will take if they are heated; what will happen if they do explode, sever or break.

All those things are provided, and I think your offer is very good. But let Frank Wilson comment now.

12:10 p.m.

Mr. Hilton: Members of the fire marshal's staff, sir, have attended these schools.

Hon. G. W. Taylor: My deputy minister has informed me that some of the members of the Ontario fire marshal's staff have attended that school in Sarnia. Mr. Wilson, would you like to comment?

Mr. Wilson: I can only add that the school you speak of, sir, is known to the fire marshal. As the minister has already said, several of our engineers and instructors have attended that school. While we have not had instructors from the Sarnia school at the fire college, we are aware of their course content and have adopted it in many cases.

We do not have at the fire college a tank car for actual training purposes, but we do have vats and material where we can burn gases, oils and chemicals to simulate the tank car, whether it be a motor vehicle or railway car situation.

The fire marshal advises me that the course you refer to is an excellent one. We are aware of it and try to keep abreast of all their latest developments so that we can incorporate them into the training at the fire college and in our regional schools, which are training the volunteers in their locales.

Mr. Brandt: What concerns me is that the industries involved in the production of these chemicals are, by and large, taking up virtually all the spaces that are allocated within the school structure itself.

However, the minute a tank train leaves my area I have very serious concerns about the capacity of all the other municipalities along the route to be able to handle or respond to any kind of incident that may occur.

Within my own municipality, where we deal with more chemicals than virtually any other centre in Canada, we never have a serious incident. The response is usually immediate, by knowledgeable people who are extremely highly trained, by the industries in the first instance and by our own municipal force in the second instance.

Virtually all the large industries have their own fire response team. Their fire trucks are on site, and that kind of thing. It is contained very quickly.

I think that, as someone who is in the business of fighting fires, you will well know that the response time is perhaps the most critical of all factors in a fire. If you can get there quickly enough, you can usually contain it.

The Mississauga incident is probably the best known to all of us. However the moment those tank trucks or cars leave my jurisdiction, I am concerned. The municipal fire fighters, who then become the first response team—not the industries who are knowledgeable, but the municipal fire fighters—may never have had exposure to many of the chemicals that they are immediately going to have to fight on a moment's notice.

We have to find a way of increasing the knowledge as rapidly as possible, to make these courses and this kind of training available. It is all good and well for the industries, and I think it is highly commendable that the industries are doing this in conjunction with our own municipal force. However, it does not seem to be going beyond our boundaries quickly enough to bring into the fold, so to speak, other trained people from other municipal fire-fighting departments.

Again, I am looking for some guidance or perhaps some suggestions as to what might be done in order to expand that kind of knowledge. I believe it is absolutely critical that we get our municipal forces trained to be able to handle these kinds of situations.

Mr. Wilson: There is an increasing awareness in fire and police departments of the importance of having the knowledge you speak of.

As you say, sir, there would be no great problem if this mishap were to happen in the Sarnia area, or the metropolitan areas of the province such as Toronto or Hamilton, but when you have these mishaps occur where there is only a volunteer department or a smaller police department, the problem to which you have alluded can exist.

The main issue is to have an awareness, not only of the volunteer fire departments, but of their municipal councils and the importance of having this knowledge and expertise available in their own particular fire departments. To that end, we are increasing the number of regional schools every year as staff and funds permit. Our emphasis is being maintained on chemical fires and how they should be dealt with when

they occur, to reduce not only the danger to the firefighter but to the community.

So it is not perfect, but I do think there is an increased awareness of this problem. The fire marshal, the fire chiefs and the councils are working at it. It is to be hoped the expertise spread throughout the province will be sufficient. I think it is sufficient.

In emergency procedures, that expert help can come into a situation very quickly. Even in a remote area there will be, in a very short period of time—hours—the fire fighting expertise and the engineering expertise to deal with an emergency.

Mr. Hilton: I can supplement those things said by the experience of Mississauga. Fortunately, Chief Bentley of Mississauga and some members of his force had been at a chemical school within a week or so prior to that event.

Many of the people were critical of the police there, asking, "Why did they not just pour on more water and put the fire out?" From the instruction Chief Bentley had, he was aware it was a safer procedure to control the fire and to allow it to burn itself out. That was what was allowed to be done.

Much of the knowledge that was useful in that unfortunate incident had been recently given to that chief by reason of a school that had been run in Metropolitan Toronto for its force and people of surrounding areas on the subject of chemical fires.

Mr. Chairman: Thank you. Mr. Stokes, is your question to do with fire in particular or transportation without fire involvement?

Mr. Stokes: Both.

Mr. Chairman: We can carry on under item 3. Would you carry on, Mr. Stokes?

Mr. Stokes: I would like to bring to the minister's attention, the problems in northern Ontario with regard to spills, such as those at Mississauga and Medonte township, where there was a spill of dangerous or flammable chemicals resulting from train derailments.

As a result of the Grange report, the Canadian Transport Board and the railway transport committee issued instructions—Canadian Pacific Railway has also issued instructions—that trains carrying a list of dangerous chemicals will not exceed a speed of 35 miles per hour while travelling through municipalities with a population in excess of 50,000. I know that applies in the city of Thunder Bay and I am sure it applies in other more heavily populated areas.

That is rigidly enforced by Canadian Pacific

Railway. I have seen some of the bulletins they have put out. I sent those to the railway transport committee, asking them why they differentiated between a city on the basis of population as opposed to a small community in northern Ontario, simply because in the event of a catastrophe the loss of life may not be as great.

12:20 p.m.

The minister, Mr. Hilton and others will know that in northern communities where the railway was there long before the community became built up, half of the community resides on one side of the tracks and the other half resides on the other side of the track. The only communication between the two sides is a level crossing at grade.

There are no overheads, nor are there overpasses. It is a level crossing. If any mishap took place, such as in Medonte township on February 28 or in Mississauga, those people are isolated. That holds true in places like Red Rock, Nipigon and Marathon on the Canadian Pacific line. There are many others, and it happens at Long Lac up on the north line of the Canadian National Railway.

I wrote to the railway transport board and asked them why they were not just as concerned about northern municipalities as they were with places in southern Ontario where the population is much more concentrated. Given the fact that level crossing is the only egress, if something happened there, those people would be hard pressed to be evacuated unless they ran into Lake Superior.

That is not the answer. The response I got back from them was there was a tremendous competition for the transport of all commodities including these dangerous or flammable chemicals. If you slowed down the train schedules by imposing a speed restriction in northern municipalities, those commodities would be lost to railway transport and the railways did not want that to happen for obvious reasons.

Have you had any complaints from northern municipalities who feel they too should be able to benefit from the experience in Medonte township and in Mississauga? Will you assist me in prevailing upon the transport board wherever a situation exists, such as I have just described to you, that you will try to prevail upon the railway companies to impose that speed restriction?

The dangers are much greater if you have a train handling these commodities moving along at track speed. The obvious reason for reducing the speed, and the speed restrictions that prevail

in cities like Thunder Bay and Metropolitan Toronto, is they must feel that by a reduction of speed, you will at least reduce the dangers. Why should it not apply to northern communities under circumstances I have just suggested?

Hon. G. W. Taylor: In no way can I comment on railroads to you with the knowledge you have. I must say, however, we have not received any comment on the speed of trains carrying chemicals or otherwise at the provincial level through the Ontario Fire Marshal, or the Assistant Deputy Minister, and naturally we would not. They would probably be made to the federal authorities. But I think you are quite probably correct.

As I recall the other two cases, the problems occurred at slow speeds. What might have occurred at much higher speeds might have been more disastrous. It is probably the standard feature. Margaret Scrivener reported in her rail study that our tracks are designed for low-speed transportation of heavy trains and not high speed, even though she was making a comment regarding passengers and freight. One has to be concerned with the grade crossing.

The one I was involved in had some problems too. Fortunately, some of the configurations of the land made it beneficial; other parts of it made it potentially far worse. You mentioned evacuation. We do have the Ontario Provincial Police and their experience and expertise, but there again in the northern areas it takes time. Those communities, it is not news to you, are many miles apart, communication lines—

Mr. Stokes: In the communities I mentioned there is only one level crossing.

Hon. G. W. Taylor: Probably in some of them there is only one way out; down the road rather than up. In some of those communities, I know the Ontario Provincial Police have difficulties patrolling certain areas. They can only go one way—that is up the road and then back down.

I assume the level crossing may go across. There are also places where you cannot even proceed along the railroad except by the rail itself. The communities are segregated by road which is different from the situation in southern Ontario.

If you would give me the details of some of those communities, I would be only too willing to pass them on. There is a greater awareness as a result of the Grange Report and as a result of the Mississauga and the Medonte accidents, and a greater amount of co-operation between the railroad companies and the Canadian Trans-

port Commission as to safety of the citizens who live along the railroads.

As a result of the Medonte affair, Canadian Pacific put together chemical response teams they did not have before who will attend upon a derailment and be first on the scene. As Mr. Brandt has mentioned, the chemical companies have had these response teams but sometimes they cannot get there as quickly as one would want them to.

Mr. Stokes: How long would it take them to get to Long Lac?

Hon. G. W. Taylor: It would take a while. There again it calls to mind the Medonte incident. It was done in co-operation with the OPP but again it was a matter of response time—get an airplane, get there, get a patrol car to bring you to the scene and assist you.

With all our modern communications and services, there still remains a response time that could be disastrous to a community. One only can show concern and try to improve all the features for the safety of the public. I would be pleased to receive some of the exact situations you have mentioned to see if they could be plugged in. At least the response teams might be made fully aware of some of the conditions they may encounter in trying to fight a fire or clean up a chemical spill.

Mr. Stokes: I will make my file available to you. I want you to know it has been raised at the Thunder Bay Municipal League and it may even have been raised at the Northwestern Ontario Municipal Association level. It will be filtering down through the normal channels and you will be getting it.

I did get a telex from the secretary of the Railway Transport Board, and they responded in the way I suggested to you. But they are also going to send somebody up there to look at the situation to see if they cannot come up with something. I thought you should be aware of this.

Hon. G. W. Taylor: I noticed too, the response feature is sometimes quick but sometimes not so quick. They carry the manifest orders on the trains and it is all done with computer. We have discovered the fire people cannot understand some of the computer writing. The manifest order, even though instantaneously produced, is in computer language and in railroad code. When that is given to the fire chief he has to sort that out. Those are some of the things we are trying to develop. They are designed for one purpose, but they are used for another purpose

and the response in an emergency situation is not as quick as one would want.

Mr. Stokes: We used to have to write up the contents of a train. It has changed dramatically since I have been down here. You had to start out behind a hundred cars and a rickety old caboose; you had to write down the car number, where it came from, where it was going, the weight of the car itself, the weight of the contents and a total description.

You even knew the cost of transporting it from A to B. At that time, the conductor knew everything about what was on the train. Now he has not got a clue. He does not have a computer so he has to rely on someone else perhaps a thousand miles away. While we have speeded up the way in which we handle all kinds of commodities, we certainly have not done much to improve communications in the event of something like a Mississauga or Medonte incident. Progress is all right, but the whole process sometimes gets blurred when we seek to improve or expedite matters.

12:30 p.m.

Mr. Renwick: I would like to try to accept Mr. Brandt's view that perhaps the committee would have some useful suggestions to make on the question he raises. I find the minister's response a little less than adequate.

We have had two incidents, and we have been extremely fortunate in both of them with respect to the extent of the damage to public safety and so on. I do not think you can have this kind of incremental approach you are suggesting—that you are doing this and doing that—in this field.

I find what Mr. Brandt said very compelling. It is not the fault of the particular municipality that the train or truck goes through their area.

When you have—on the figures which I have here for 1979—470 volunteer fire forces, 88 composite ones and 35 career ones in the province, and with hazards of the kind described by Mr. Brandt on the highways and in the rail cars, does it not strike you that the ministry has a responsibility to formulate a program which would provide for training a person from each of the municipalities?

Over a period of time, you would have to make absolutely certain that the responsibility for training someone in each of the municipalities, from amongst those who have responsibilities, is accepted—in the way in which Mr. Brandt has indicated they have the expertise and the skills in Sarnia. Would it not make sense, where you have a chemical industry

centre such as Sarnia, to make use of the knowledge which their industry and municipal authorities have in this field, for the purpose of establishing there, the place where the instruction could be given?

That way there would be at least one or two persons in each municipality throughout Ontario with the kind of basic knowledge that can be used on the spot in the interval before the expertise which may be available in other forces can arrive on the site.

Those are just obvious things that follow from Mr. Brandt's comments. Perhaps they could be shot down. I am sure other members of the committee might have views.

I find the response of the minister the same as responses which come from all public authorities; it is a very played-down, low-keyed one of semi-assurance to the public, when you know as well as I do that the margin between disaster and a controllable event is very thin.

My colleague, Mr. Stokes, has raised the same question. Could we have some indication of a grasp by the ministry that it is their responsibility, not the municipality's—in the case of the transportation of these goods—to establish the training programs that will immediately and quickly spread out the knowledge? It was indeed fortunate the chief in Mississauga was there the week before. It would have been a little less than helpful if he had, according to plan, gone the week after.

It just seems to me that Mr. Brandt's point, and the points my colleague has raised, are ones you have to take hold of. You just cannot treat this question as one in which we will learn by our experiences as we go along and will make some changes. Is there any sense of direction which you are going to give in this field?

Hon. G. W. Taylor: Indeed, Mr. Renwick, I think the sense of direction is one which was initiated prior to my coming into the ministry. There is the entire concept of emergency planning and the bill that we mentioned is coming along; the hiring of an emergency planning co-ordinator, who has made himself known throughout Ontario, indicating to the local municipalities the necessity of formulating emergency plans and offering instructive courses.

You heard Mr. Brandt's statement that the present course, even at the specific school he refers to, is over-subscribed. The one in Ottawa, which covers many types of emergency information, is over-subscribed as well. The school at Gravenhurst, as well as instructing on chemical spills and firefighting, instructs on all other

types of firefighting. Although the new one will not be developed for two years, and will be increased in size, that school is over-subscribed.

When you compare that to the total number of firefighters throughout Ontario, the numbers are immense. They also have to continue upgrading their schools. There is no prescribed course they take before they become firefighters; they are in-house trained, generally, or instructed at their local schools. This Gravenhurst college is an upgrading school providing advanced knowledge.

When you talk about emergencies it is more than just fires. The emergency planning approach operates on what is considered to be the lead ministry concept. If there happened to be a chemical spill with no fire involved, you would possibly get a response from the local fire department. That, initially, is the source people would turn to quickly. There would also be police forces in these emergencies; and then Ministry of the Environment response teams would go to the scene.

If it was in the northern area and involved a forest fire type of emergency, it would probably be the Ministry of Natural Resources or the Ministry of Northern Affairs which would respond. The Ministry of Natural Resources would be one of the lead ministries.

Mr. Stokes: And the volunteer fire brigades.

Hon. G. W. Taylor: And the volunteer fire brigades, of course. One has to look throughout Ontario; not all communities are fortunate enough to be able to afford full-time, paid firefighters; many work on a volunteer basis.

In some situations, particularly in the area represented by Jack Stokes, the Ministry of Northern Affairs will often provide the equipment and some training, but those who attend are basically volunteers. Similarly, when we refer to the Medonte situation, the chief who was the lead firefighter was a volunteer.

I am taking nothing away from the volunteers. They are very knowledgeable, expert, dedicated individuals. However, one has to acknowledge the fact that some areas, because of the economic makeup, will be operating with volunteer people. They then have to gain their knowledge by taking time off from their employment to do so.

So the ministry gives its guidance, makes the courses available and makes sure there are courses offered in these advanced areas so that the information is disseminated. I do not think there is a lack of direction. I think the direction is there. It is one in which, possibly, the techno-

logical advances of society—with the amounts of chemicals and how they are transported—are probably overtaking the ability to train people quickly enough and provide the information to them as fast as advances are made.

Mr. Renwick: I find this response of yours even more frightening than your earlier one. It is not a direction, it is a sort of meandering stream you are on with a lot of obstacles.

I cannot conceive that you do not have a responsibility to take the 470 volunteer organizations, the 88 composite ones—let us assume the 35 career organizations have the facilities and the capacity to do their own training—to establish a crash program in the vicinity of Sarnia.

12:40 p.m.

Using the knowledge and skills of the chemical industry in that area you could pinpoint not all of the obstacles but the specific point which Mr. Brandt has raised. Even if in each of the municipalities there was a person who knew all about the chemicals that have their origin in Sarnia it would be an immense step forward.

Mr. Brandt specifically said that in their area, with the co-operation, knowledge, skill and expertise of the chemical industry and the municipal fire association, they have a lot of knowledge, ability and skill. You have an obligation in a short period of time to get 470 people—or two from every one, which would be roughly 1,000 people—put them through a specific, clear, well-prepared program in Sarnia at your expense—not at the expense of anybody else, at your expense—for the purpose of getting this under way.

Then at least it will give you an opportunity to flatten out the educational and emergency programs and start to deal with them. I have gone on too long on Mr. Brandt's point, I think he pinpointed the problem. It leads me to believe it is a soluble problem. It could be done very quickly.

Hon. G. W. Taylor: Mr. Renwick, in response to that, it is very simplistic to say there are 476 units, as you call them, but there are some 25,000 firefighters in the province and some 16,000 part-time ones. Our new initiative—

Mr. Renwick: I can understand that. I hope there are. Everybody is quite happy about that. I am saying Mr. Brandt pinpointed a problem and suggested in each place there should be one person, or two people, who have the basic kinds of knowledge which is immediately required on the spot. I do not think that is beyond the wit of

this province, to take hold of the problem and deal with it.

Hon. G. W. Taylor: I would suggest we have taken hold of the problem. The courses are available and they are upgrading them continuously. The Ontario Fire College only has capacity for 46 students. I do not know the capacity of the school Mr. Brandt is suggesting.

When you talk of 400 people, I do not know the exact level of skills of those 400 you want in the different units, or 800, but I suspect they are available, with knowledge. Also I would think you must then train them for all types of firefighting, not just exclusively chemical. They are upgrading their skills all the time in that. Through the office of Ontario Fire Marshal and through the ministry those needs are attended to. They are made aware the courses are available and the courses are being attended. There is a direction.

Mr. Chairman: Thank you. Is there anyone else who wishes to refer to the firefighting services under item 3? I had you under item 1, Mr. MacQuarrie.

Mr. MacQuarrie: It can really logically be combined. It is another question arising out of emergency planning dealing with transportation of hazardous substances.

By their very nature, chemicals seem to require, depending on the chemical, different approaches from the point of view of dealing with them in the event of an emergency. On the basis that being forewarned is forearmed, does the emergency planning now in place provide for advance notice being given to protective services along the route taken by shipments of these hazardous substances? One can arrive at an accident in short order but not know what is involved in the tank car or what have you. One might have all the knowledge in the world with respect to dealing with chemicals, but unless one knows what chemical is involved, one is left scratching one's head.

Hon. G. W. Taylor: If it involves a railway, the train has what is called a manifest, and that is filed. One checks with the manifest, with the Canadian Transport Commission and through the Canutech Information System, another body that lists what to do in regard to the particular substance. It is an emergency response method.

Mr. MacQuarrie: I was thinking of some sort of advance notice to protective services along the route that this hazardous cargo is coming through, so that they have some indication of

what steps they have to take in the event of an emergency.

Hon. G. W. Taylor: No, there is not such advance notice, except for the feature of transportation of radioactive materials. There is a route—

Mr. MacQuarrie: I know there is some notice given on radioactive materials.

Hon. G. W. Taylor: On the other ones, no, there is no advance knowledge.

Mr. Stokes: Tom Fallon, who is head of the emergency measures organization in the city of Thunder Bay, has heard of minor incidents which involved hazardous chemicals, particularly those transported by road. He has written these down and sent me copies. I find it very disturbing to hear the minister say there is really nothing in place and that nothing is being done to come to grips with the problem my colleague raises.

It is certainly a concern in the city of Thunder Bay. We have had some near misses, just because Fallon was not aware of dangerous chemicals that were being transported from some place out in Manitoba to northeastern Ontario for processing. If they are not advised in advance that these very dangerous chemicals or explosives are going through, they are only in a position to respond after the fact.

Mr. Brandt: Not only do they need information as to the chemicals going through, but they need a specific kind of documentation relating to the mix of those chemicals: specifically, which cars they are in, and the displacement of the volatile chemicals as they relate to the train load, in the case I am describing.

I find the information flow to the municipalities through which a load of chemicals is going to be transported is not as strong as I would like it to be. Additionally, why do they not know what chemicals are on the train? They do not know how to fight the chemicals even if they do know which ones are on the train.

That is the point Mr. Renwick is making, and it is the smaller communities that bother me most seriously at this point. However, even, the larger municipalities mentioned earlier do not yet have the capacity or knowledge, in some instances, to fight some of the fires relating to this kind of train load.

The problem, as I see it, is that one must recognize that society cannot live without these chemicals today. We are totally dependent upon them, and they are growing at a prolific rate: new chemicals and new types of products

on which the knowledge virtually expands on a daily basis. There has to be some better mechanism in place, in terms of instruction and education, to respond to that kind of thing.

The Sarnia school alone is not sufficient. It has to go beyond that, and I recognize that. However, it frightens me that so few municipal fire departments have any knowledge whatsoever of how to deal with this type of situation.

It is not just a question of having one or two people, which I still think is insufficient; the question is really that the vast majority of them have absolutely no people whatsoever on their firefighting forces with any knowledge of the kinds of fires they are going to be faced with.

That is very troublesome, when you look at the potential for disaster in this province, particularly in remote communities such as those Mr. Stokes is describing.

Mr. Stokes: Endangering the lives of the very firefighters themselves.

Mr. Brandt: Yes.

Mr. Chairman: I do want to speak to the committee about some scheduling, so if you

push this right to one o'clock, gentlemen, we are going to discuss it after one.

Do you have another question on item 3 specifically?

Mr. Renwick: Yes, I do, but we could leave it until the next day.

Mr. Chairman: Mr. Renwick, I will point out that in addition to you, there are other people—this is an old problem—who wish to get to vote 1703. You will remember the screaming last year when we did not get to the Ontario Provincial Police, where the great bulk of the money was being spent. Mr. Piché in particular was very unhappy with not getting matters finished.

If we bog down on one item, remember we are not going to get to any others. So shall we knock off at that point, gentlemen, and thank you Mr. Minister.

The committee moved to other business at 12:53 p.m.

The committee adjourned at 1 p.m.

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Stokes, J. E. (Lake Nipigon NDP)

Taylor, G. W.; Solicitor General (Simcoe Centre PC)

Treleaven, R. L.; Chairman (Oxford PC)

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

Wilson, F. L., Assistant Deputy Minister, Public Safety Division



No. J-9

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Solicitor General



Second Session, Thirty-Second Parliament
Wednesday, June 30, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 30, 1982

The committee met at 10:10 a.m. in room 228.

ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL (continued)

Mr. Chairman: Gentlemen, we have a quorum in place.

We do have a few more visitors this morning than were contemplated. The first question that has been asked of the chair is whether the demonstration we are going to see forms part of the estimates or not. Is this part of the time this committee is to spend on estimates of the Solicitor General? Would the committee please assist me?

Mr. Mitchell: Mr. Chairman, in the past, where other ministries have provided demonstrations and so on, they have been part of the process.

Mr. Renwick: I did not hear what Mr. Mitchell said.

Mr. Chairman: He said we have had demonstrations by other ministries in the past which have formed part of the estimates time.

Mr. Renwick: We have also had demonstrations which have not formed part of the estimates, so that is no proof of anything. The last one was the breathalyser test and it did not form part of the estimates.

I cannot conceive that a show put on by the ministry for the benefit of the media is part of our consideration of the estimates of the ministry. I am not objecting to the show.

Mr. Brandt: Mr. Chairman, just a question in regard to the length of time you anticipate this is going to take. Perhaps we are talking about a relatively minor item. Do you know how long it will be?

Mr. Chairman: I am advised that half an hour, including questions from the members, is the time we are looking at.

Mr. Breithaupt: Perhaps we could agree that after the demonstration is over, once the questions begin the estimates time would begin, and save a lot of trouble.

Mr. Mitchell: We are not trying to be difficult.

I just made a comment as to what has been the habit in the past. Certainly if members prefer it that way, we are quite happy to go along with it.

Mr. Chairman: Mr. Breithaupt's suggestion is the consensus, therefore the clock has not yet started.

Who is organizing the demonstration?

Hon. G. W. Taylor: Shaun MacGrath, chairman of the Ontario Police Commission, will introduce the participants to you and explain the process that you are about to see.

The committee viewed an audio-visual presentation at 10:13 a.m.

10:38 a.m.

Mr. Chairman: In fairness, we are getting into questions here. May we start the clock running at this point? Satisfactory?

Mr. McBurnie: To continue with my response then: it is a leather holster which must be worn on a double leather belt so it is not sticking out to the side in the American fashion. We do not want that; it must be close and must ride high. This gives comfort when sitting and added security with the elbow. In other words, he could very quickly put his elbow against my hand and block me there and I can do absolutely nothing at all.

Also, when you are talking about this spring device—it is down the front here with some spring in it, some steel in it—the design is such that behind this little button there is a screw which adjusts the tension. Obviously, it must be firm enough that the weapon will not fall out, so that even if it is undone the officer can still run; there is no flapping around at all and it remains securely in place because of the design of the holster and the strength of the springs. It is absolutely no good having a weak spring like some of your quick-draw holsters have, because then we lose security. We are interested in having the strong spring, we are interested in security of the weapon.

Also, there is difficulty here, because of the design of the holster, in trying to pull this hammer back, since the design around the cylinder pulls it fairly firmly together. Again, it gives some added protection.

Mr. Chairman: Is it accessible?

Mr. McBurnie: I think we will see it is a lot more accessible than with the other styles of holsters.

Maybe I will eat these words one day, but I would like to say that hopefully, if all officers in this province went to this style of holster, we could train them at the Ontario Police College under realistic situations in which they would be called upon to draw from the holster.

Also, I am going to suggest that because of the present style of holster, somewhere early in the sequence of events the officer must make up his mind if he is going to use the revolver. With this style of holster, hopefully, his point of decision can be much later in the chain of events so that there is no gun swinging around or gun out by the side, something of this nature. This is a problem and is something we do not like to see.

That is my presentation, unless anyone has further questions.

Mr. Breithaupt: First of all, if this holster style is developed, is it the intention of the police commission, if not to require at least to suggest seriously that all forces immediately go to that style, so that there would be this common training standard and experience which would benefit the entire police system in the province?

Hon. G. W. Taylor: I think that is policy, Mr. Breithaupt, and would be a question for the police commission rather than have this officer—

Mr. Breithaupt: I realize that, and I felt that Mr. MacGrath would—

Mr. Chairman: And also, now that we are in the estimates, could anyone answering questions speak into one of the microphones. Thank you.

Is someone going to answer a question there?

Mr. MacGrath: Yes, Mr. Chairman; we are conducting the study at the moment and we will have to wait another three months before we can draw our conclusions to present to the Solicitor General. The regulation will be aimed at a more secure holster. We do have to respect local autonomy. If a particular force wants to retain the old one, fine; but we are hopeful that by and large the more secure holster will be adopted.

Mr. Breithaupt: The other question I had, Mr. Chairman, would be with respect to part of the information upon which this study is no doubt being based.

I would expect that by now you would have quite a bit of statistical evidence from a variety of police forces that have used all three of these holsters. Are you able to tell us now what

comparative figures you have with respect to the safety of officers or the holding back of that step for the use of firearms, which may well have resulted from this style of holster compared to the other traditional closed holsters? Are you gathering some information on that?

Mr. McBurnie: We are gathering some information, but the problem is our information is secondhand because we are not in the field testing these holsters. I believe, as Mr. MacGrath said, that there are approximately 38 police departments in the province that are testing these holsters now. I think they are the people who could give us the proper statistics.

All I can say, secondhand, is that there has been no adverse public opinion received by the officers about this style of holster. Again, I am only going on comment I have had at the police college from an officer of the Hamilton-Wentworth police department who was issued one of these holsters which he tried out in the field. The very next day he was given back his old holster, and during a scuffle he lost the service revolver the very next day.

There are obviously many cases where police officers have lost the service revolver, either during a tussle or while running. I am not suggesting for a moment, though, that all of these officers come forward and advise their sergeant, "Gee, Sarge, I lost my service revolver today." That sort of report is not being made, obviously, but it is quite commonplace.

Mr. Breithaupt: I was thinking more of the actual situation where a revolver is fired. Police forces in most jurisdictions no doubt require a report in that particular event. Have you been able to gather from statistics, perhaps from police forces throughout the United States that use this style of holster, whether there is anything you can actually measure that can be gained in safety and security and the possible lesser use of firearms as a result of their experience with this type of equipment? Is there anything you have been able to learn that reinforces your study?

Mr. McBurnie: Not at this time. It will not be possible to do so until we get many more officers wearing the holster. I know that Mr. MacGrath is waiting for some of this information that is coming in from police departments now. That is why he is talking about a delay of three months. I know he has asked for this information. I am not in a position to answer these questions.

Hon. G. W. Taylor: Mr. MacGrath might answer some of those, Mr. Breithaupt. Given

the number of forces and the relatively small number of officers on the individual forces using the new equipment, I think on some of the questions you have asked by way of statistical background that the extent of our information at this time would possibly be very weak.

Mr. Breithaupt: I did not know whether that might be so or not. I just thought it would obviously be something you would be concerned with. Perhaps we could hear from Mr. MacGrath as to the sample of forces that are using this holster and what comparative information we have been able to get from jurisdictions outside of Ontario about this theme.

Hon. G. W. Taylor: I can read you the list of forces that are at present experimenting with these and have permission to experiment, if you so desire, but I think a general summary of the present status from Mr. McGrath would be better.

Mr. MacGrath: Mr. Chairman, there are 38 forces approximately. Take a 10-person force up north; all 10 officers are carrying the more secure holster. Hamilton has 12. The OPP are testing them very broadly across the province. In Ottawa, I think we are testing 12. In the Durham region they are testing 12: six are being worn by police officers on beat patrol, six in cars.

Mr. Breithaupt: What would you have in the Waterloo region, for example?

Mr. MacGrath: Twelve also: six in cars and six used by officers doing beat patrol.

The only thing that is emerging so far from the study, the only concrete thing—and we are three months ahead of ourselves so I am guesstimating—is that there is going to be widespread public acceptance for the more secure holster.

Mr. Breithaupt: Does this come as a surprise? One of themes that has been discussed in the use of this kind of holster is the traditional, more modest, one might almost say the low-key, English-bobby approach on display and use of weapons. I would have thought there would be some concern. It is very interesting to hear that is not as important a theme as one might have expected.

Mr. MacGrath: The arm, I would point out, covers the exposed butt. They are being tested at Ontario Place and there have been very few adverse comments from the public. This is what we are tabulating at the moment.

Mr. Hilton: Further on this, the Hamilton

experience was that one child came up to a policeman and said, "Hey mister, I can see your gun." That was the extent of the adverse comment, I understand—

Mr. Breithaupt: I am sure that this administration would use much more sophisticated polling techniques than that to decide on the matter.

Mr. Hilton: We are not polling, it was just a question of spontaneous comment by the public.

I might also say that the testing done by the OPP—I had not passed this information to Mr. McGrath since I got the report from them only yesterday—involved using the holster in their cars, because their officers while patrolling are sitting in their vehicles. They found they were more comfortable to wear while operating their motor vehicles. They have also used them with snowmobiles, because they were concerned that snow kicked up might get into the open holster. That did happen, but not to a degree that gave them concern.

10:50 a.m.

They were also concerned about the cold in the north, having regard to that spring mechanism, that it might stiffen up in the cold, or the leather become brittle or something like that. Their experiments in the cold weather have shown this is not a factor on the particular holster they were using. I am not just sure which it was, I think it was the Rogers Boss unit, but I am not quite sure.

Mr. Breithaupt: That is the name of the holster.

Mr. Hilton: That is a trade name.

Hon. G. W. Taylor: It is a manufacturing name.

Mr. Hilton: I do not think it would be our purpose through Mr. MacGrath's operation to name any specific one. We would make specifications in relation to safety that would be permitted.

Mr. Breithaupt: There are quite a variety, I presume, of these holsters available, probably through the American market, are there?

Mr. Hilton: Three or four.

Hon. G. W. Taylor: The one you saw demonstrated is a heavy solid leather style. There is a plastic one of a similar construction and design also being touted. I think one of the down sides, as the deputy minister said, is in connection with the effect of adverse weather conditions. There is a feeling the revolvers might take a little more

maintenance and care, since part of the weapon would be exposed and might be damaged in a rain storm and things of that nature. However, that just means the officers will be taking that much more care of their revolvers, and that we would probably like to see them do at present.

Mr. Breithaupt: You can't shine plastic, so you will want to keep a leather holster.

Hon. G. W. Taylor: I think also there is a longer life to the style you have seen demonstrated as compared to the life of the present style of belt and holster.

There is one other feature that the officer did not mention, which is that with this style of belt and holster you can also remove what is called the cross strap belt. Some of the officers project that as a definite negative feature to their personal safety. As you will notice, the officers' ties, when they are wearing them, are clip-ons which come off if they are grabbed in a scuffle. Similarly, the belt is a very negative feature in a scuffle in that an assailant can move the officer around with a great deal of ease by grabbing his belt in that situation. That also will be removed.

Other paraphernalia—the radios, the sticks and things like that—all are put into a better configuration with this style of holster as compared with the previous one. There are a lot of other features we are not explaining but which do come into play in our overall consideration.

Mr. Breithaupt: Just yesterday I happened to walk along to a Metro Toronto police constable and I asked him, "What does all this weigh?" He had one of the new handle sticks, a radio, his handcuffs and his revolver. I would think, particularly from the cross-draw situation of that revolver holster compared with this, that a sorting out of the bits and pieces would have to occur.

Hon. G. W. Taylor: A very thin waistline is not a plus.

Mr. Breithaupt: No, that is true enough, but it may be a lot more convenient and balanced to have the revolver on the right-hand side in any case.

Mr. McBurnie: May I make one comment? Because of the advent of the soft body armour being worn, it makes it again a little more awkward for the officer to reach across his front to get at that cross-draw revolver and wearing it on the strong-hand side would alleviate some of this difficulty. On a testing with officers who are a little stouter than the rest, there did not seem to be any particular discomfort with this style of holster.

Mr. Renwick: Mr. Chairman, I would like to pursue what my amateur friends at the table have been talking about. What are the disadvantages of the third type of holster?

Mr. McBurnie: The disadvantages I would say are its cost—

Mr. Renwick: Leaving aside cost, I am talking about the point of view of the officer.

Mr. McBurnie: I see none. The only comment that has been made, and I don't really agree with it, is that it is now a little more open to the elements. I would suggest that old leather holster attracts dampness and dirt more readily, because it is all completely enclosed. We know that leather does attract dampness.

If there is a problem, and I do not think there should be, then it is up to the immediate supervisors in the field to ensure that these firearms are in good condition. Also, it is the officer's responsibility. He has been issued with that revolver. He should make sure, it is his duty to make sure, that it is in proper, good working condition. That was the only drawback I could possibly foresee.

Mr. Breithaupt: Perhaps we could ask about the cost situation. What are the comparative costs of these holsters?

Mr. MacGrath: It is approximately \$70 to \$80 at the moment for the more secure holster, as opposed to \$20 to \$25 for the existing holster. Our studies indicate that an officer will go through three or four holsters during his career; they wear out.

Mr. Renwick: Mr. Chairman, perhaps my question would be more properly addressed to Mr. MacGrath.

When you say they are being tested, what is the nature of the tests? What are the instructions or guidelines which are given so that when the results of the tests are known you will have the kind of information you wish to have? Is it a written test? Is it simply, "We are distributing these for your comments"? Have you asked for a series of specific tests to be conducted?

Mr. MacGrath: My response to that, Mr. Chairman, would be that the more secure holster has taken the place of the former holster. We have not given them any guidelines, because we did not want to persuade their thinking. We did ask them to tabulate and keep record of any comments from the public, and then to file reports with their supervisors if and when they had to use a gun during the normal course of duty. This is what is being set down and will be tabulated and supplied to us.

Mr. Renwick: There is no questionnaire of any kind that has gone out? No instructions about testing in various types of climatic conditions or various types of specific situations in which police officers might find themselves? There is nothing about that? They are simply to report their preferences?

Mr. MacGrath: No. The holster was substituted for the former holster used in normal police duties.

Mr. Renwick: Who instructs at the present time? Does each force instruct in the way the demonstration was put on for us this morning?

Mr. MacGrath: Yes; at the college we have various zone meetings of the chiefs of police and these gentlemen have conducted quite a few demonstrations across the province. We take every opportunity we get, when we get a number of chiefs or supervisory police personnel together, to demonstrate the equipment.

Mr. Renwick: I am not trying to cross-examine you, I am just trying to indicate—you said a certain number of these holsters had been distributed to a certain number of forces across the province.

Mr. MacGrath: Each force opted to buy them itself. We gave every force the opportunity to participate. Some chiefs decided not to test these more secure holsters. There were 38 chiefs who decided to go ahead with some type of tests.

Mr. Renwick: What would the value of the tests be then? I have a little difficulty in seeing how the police commission, on the basis of that kind of preference testing, is going to be able to make any valid or valuable recommendation.

Mr. MacGrath: To supply us with the more secure holster for both the officer's own safety and the safety of the general public. This was the basis for the Greenwood report originally. It has all stemmed from that report. We approached the chiefs of police, who have been concerned for some time about the insecurity of the existing type of holster.

Mr. Renwick: I can well understand that. I do not want to belabour it, but the point is that the professional demonstration put on this morning was designed in such a way, and I am saying quite properly designed in such a way, as to say that there really was no alternative but to go to this open holster. Is that going to be the recommendation, apart from the local autonomy question?

Mr. MacGrath: The reports we have had so far would indicate that we would be going to the more secure holster.

11 a.m.

Mr. Renwick: I have one further question. Where are the various holsters manufactured?

Mr. MacGrath: Mainly in the United States, is it not, Jim?

Mr. McBurnie: Mainly in the United States. The particular style of holster that we demonstrated here this morning is also available in the Mississauga area. I believe they are bringing them in from the United States and assembling them here.

Mr. Renwick: At the time when the bullet-proof vest question came up before the police force, my understanding was that fortunately it was going to be an Ontario product, or an Ontario manufacturer involved.

Mr. MacGrath: That is correct, sir.

Mr. Renwick: Is there any particular exploration being made about—God forbid, the A.R. Clarke company is in my riding—investigating the possibility of the manufacture of these holsters in Ontario?

Mr. MacGrath: We are hopeful that they could be manufactured here.

Mr. Renwick: Are there any initiatives being taken?

Mr. MacGrath: Some industries have written us and been in touch with us about when our study would be complete, but we will not be purchasing them. Each force will be purchasing them on its own, unlike the body armour which was purchased in bulk and supplied and paid for to the tune of 50 per cent.

Mr. Renwick: I can well understand that. It is still a substantial amount of business. I do not think it is sufficient to say that each force will purchase on its own. If it is possible to buy in Ontario, a positive effort should be made in that direction.

Mr. Breithaupt: Just one follow-up question on Mr. Renwick's.

Mr. Chairman: Mr. Brandt, may Mr. Breithaupt have a supplementary on your time?

Mr. Brandt: Sure.

Mr. Breithaupt: You were saying that a dozen of these holsters went to the Waterloo region, because the chiefs agreed—I doubt if you would have sent six to each one—but be that as it may, in the circumstance will these simply arrive in the mail, as it were, or is a demonstration put on

for that force so that the dozen constables, however chosen, would have an obvious training hour or two to feel comfortable with the new system?

Mr. McBurnie: All the chiefs of police who have elected to try this holster have witnessed a demonstration. We also give demonstrations right at the police department for various supervisors, range personnel. This also continues at the police college with all the supervisory classes from these various police departments, who also observe this demonstration. Obviously we would not like to see officers out there in the field who have not had some instruction on the use of this style of holster.

Mr. Chairman: Mr. MacQuarrie has also requested a supplementary. Mr. Brandt?

Mr. Brandt: Mine is not a supplementary. I have another question and some comments. I will let Mr. MacQuarrie go ahead, and then if I can—

Mr. MacQuarrie: Mine is going to be relatively simple following Mr. Renwick's suggestion of Canadian manufacture. Is the recommended type of holster subject now to patent protection in both the United States and Canada?

Mr. McBurnie: I would say yes.

Mr. MacQuarrie: Have you particulars of a Canadian patent, and can particulars of the patent be made available to interested manufacturers so that they in turn can apply for a licence from the patent holder or owner?

Mr. McBurnie: I think this may already have taken place in the case of a particular manufacturer of that style of holster that I demonstrated this morning. It is being made here in the Mississauga area.

Mr. MacQuarrie: Someone said it was being assembled here in Mississauga. I was wondering whether the full manufacturing process could take place here under licence, or whether they are getting parts from the United States.

Mr. McBurnie: They are probably getting parts right now, because there are only a few of these holsters out on trial.

Mr. MacQuarrie: I just wanted to make sure that that was being followed up.

Hon. G. W. Taylor: Actually, Mr. MacQuarrie, due to government procurement policies, we will naturally try to secure a product manufactured in this jurisdiction. Again, the local forces will make their decision. It is hoped they will follow the lead of the government procurement

policies and try to purchase within the jurisdiction.

Mr. MacQuarrie: The main point, of course, was whether that potential Canadian manufacturer was trying to obtain licence privileges under the patent. That is really the only way they can be manufactured possibly in Canada. If the United States patent-holder resisted in any way, there are compulsory licensing procedures that are available under the Patent Act, so that I could see no reason, if a market existed here, that the thing should not be made in Canada and in Ontario.

Mr. Brandt: Mr. Chairman, I served on a police commission some years ago and I recall at the time that the revolvers were required to be changed to a new type of equipment. The response of the local police commissions was rather negative only because the thing seemed to come very quickly and there was a cost implication.

I just wanted to make the point that if in fact this becomes a mandatory piece of equipment, it be done with certain sensitivity in a time of rather severe restraint. Just very quickly looking at a 100-man department like Sarnia's, you are looking at a cost of about \$7,000, which would perhaps be the equivalent of trading in a police vehicle. So that is a fairly substantial amount of money for a small force. I just wanted to make that point because the cost is \$70 per unit.

Mr. Spensieri: Plus the sales tax?

Mr. Brandt: Plus the sales tax, yes.

The point I wanted to ask a question about was in regard to the other jurisdictions that have been mentioned. We have talked about the 37 or 38 locations within Ontario where they are being tested now. But is this standard equipment that is issued in some other jurisdiction where they have had perhaps a longer period of time to experiment and have a trial with the equipment—

Mr. Breithaupt: In Canada?

Mr. Brandt: —in the United States or wherever—departments where it is a mandatory piece of equipment now?

Mr. McBurnie: This particular holster is patented in Florida and is used by some of the Florida police departments at this present time. I believe they have been using it for a number of years so they may be a good source of gathering some of the statistics you were talking about on this more secure style of holster. Obviously they have a lot of different holsters in the United

States, but again not necessarily a security style of holster.

Mr. Breithaupt: Will you be doing this as part of the investigation of different kinds of holsters that are being used in your studies? Will you be expecting to receive statistics not only from, let us say, departments in Florida that have been using this for some time, but also the other kinds that have been used by other jurisdictions? Are you doing quite a sampling of that perhaps to build up a better statistical attitude than we are able to get from only the 38 samplings we are doing in Ontario?

Hon. G. W. Taylor: That has been done and the Ontario Police Commission will continue to do that. There was a task force on the use of firearms by police officers headed by Judge John Greenwood. There has been other material received from the police departments in Vancouver, Hamilton-Wentworth, Baltimore, Cheektowaga and Kansas City.

Mr. Brandt: Do you have one on the list where they shoot a lot?

Mr. Hilton: These police departments, Mr. Brandt, do not shoot a lot.

Mr. Breithaupt: It sounds as if a ministerial tour is about to begin.

Hon. G. W. Taylor: No, we rely on the good information we receive and the OPC review of it. They are looking at more than just the particular holster you have seen demonstrated here. They are receiving information on the different brands of a similar style. There is another name, and I am sure the officer is more familiar with it: the Alessi holster.

Mr. McBurnie: There are the Alessi holster, the Bianchi holster, the Safariland; the list goes on and on.

Mr. Brandt: That was another question I had, Mr. Chairman. Does this holster have a name?
11:10 a.m.

Mr. McBurnie: This particular holster is made by the Rogers company and the model is referred to as a Boss.

Mr. Brandt: Sounds appropriate. The final question I had was with respect to the length of time the holster has been in use. When was it invented? How long has it been in the field?

Mr. McBurnie: I could not tell you that off the top of my head. I know that personally I first observed this holster between 2½ to three years ago as a result of some meetings we had at the police college with various police departments on firearm strength. It was brought to my

attention by a Staff Sergeant Robert Pope from the Hamilton-Wentworth police, who on his own volition had gone ahead and made some inquiries himself as to this type of holster and also some of the comments about these security holsters across this country and also in the United States. So it was 2½ to three years ago, at least to my knowledge.

Mr. Chairman: Mr. McLean?

Mr. McLean: My questions have all been answered.

Mr. Mitchell: First, Mr. Chairman, as one who has a very distinct fear of firearms of any kind, I am one of those who shared the concerns of many people out there about what was misunderstood about the types of holsters. I think many people out there visualized a western marshal type of operation where it was a matter of a zip and it was out and to hell with anybody else who got in the way. The demonstration this morning certainly, at least to me, more than adequately answered the main concern I had, and that was with the officer, in that it seems to me, as an uninitiated observer, that that security is very definitely there.

However, I have a question. One does not like to dwell on very unfortunate mishaps but over the past number of years there have been some very unfortunate deaths of police officers. If I remember correctly, some have been killed with their own weapons. I wonder if there has been anything derived from that as to the type of holster they were wearing, because surely, having seen this demonstration, that would be to me more indicative of what one could expect.

Mr. Breithaupt: What if?

Mr. Mitchell: Well exactly. So perhaps you might be able to comment on that.

Mr. McBurnie: Yes, sir.

Mr. Hilton: Do you have figures on that?

Mr. McGrath: No we have no figures, but we do know that the last Metro officer killed was wearing the regular-style holster with the flap over it.

Mr. Hilton: My understanding, Mr. McGrath, was that he was going into a domestic situation. There were two of them. I cannot give any sworn evidence but my understanding was that he and his partner, as a precaution, as has been indicated in the demonstration, had slipped their hands behind and opened their holsters so their guns would be readily available if needed. It is unfortunate that domestic situations are some of the most violent.

Mr. Mitchell: Yes, those are the ones that are completely unpredictable. Again, as I say, I do not like to dwell on unfortunate incidents, but was the situation with the OPP officer in Mount Forest the one where the officer was shot with his own weapon?

Hon. G. W. Taylor: No.

Mr. McGrath: No.

Hon. G. W. Taylor: He was shot by another weapon.

Mr. Mitchell: Those incidents, I guess, are the statistics that would perhaps show people the situation more forcefully. In my opinion the demonstration was excellent this morning. Having seen the demonstration of that pursed or more standard holster, I am now frankly terrified.

Much as I abhor firearms—I will not have one in the house—I remember when I was in the military and was forced to take some weapons training that the comment to the infantry man was always, “Don’t forget that that rifle is your best friend and it is up to you to take care of it.” I think the comments about taking care of a weapon are quite correct. Of course, the colonel there would recognize that perhaps even more than I.

That demonstration brings me to the other question. If the commission comes to the conclusion I think it is going to reach, because as I say that demonstration did it for me this morning, what sort of educational program are you going to offer the public? I know what you are going to do with the officers, but what sort of educational process will you go through with the public? I am an example of that public in that we all visualize the western marshal.

Mr. MacGrath: We will have to do our best to assure the public that the new holster, if we are to go that route, is a more secure holster with respect to the safety of the policeman and the safety of the public at large, as was indicated in the demonstration.

Mr. Hilton: If I may assist on that, Mr. Chairman. I think one of the most important things we can do is change the accepted name. After all, what’s in a name? We have called it the “open holster.” I think we should, as the demonstrators did today, use the term “security holster.” We should abhor that which appeared in the paper the other day, that it was something to do with a quick draw. I noticed it was in quotes, and I can only relate those quotes to Mr. Walter who was being questioned at the time by the press.

We should impress upon police officers,

police committees and those who would be involved that that is not the purpose. That is not why we are concerned. It is the safety aspect that is paramount.

Mr. Mitchell: Exactly. I was going to comment. Not only is it a secure holster, but it is a safe drawing holster, as was pointed out in the demonstration. There is always that little flip the officer has to do with the current holster to get it into his hand correctly; in the meantime he is swinging through that arc. Having had that alone pointed out, I think I would be about six blocks away. If that sounds facetious it is not meant to be, that is the fear I have of weapons.

I think Mr. Hilton is quite correct. We should try to get across to people that what you are talking about is security and safety.

Mr. Breithaupt: I would agree. I would certainly hope the open holster theme is something you are going to actively work at to sort things out. I must say that my views on this open holster idea initially brought visions of the quick draw, the loss in a scuffle and the southern sheriff attitude, which I did not look forward to seeing our police forces emulate.

I thought there might be some public view that that was just not the kind of style that was wanted, but if you can get away from this open holster idea, which I think brings an immediate perception that I am glad to see from this morning’s demonstration is not correct. I hope that can be dwelt upon and probably some good will result.

Hon. G. W. Taylor: I think if you go back to Mr. Mitchell’s comment, the larger area is that with the other style of holster the gun often comes out in a situation where the officer probably is not aware that is going to take place, such as in the domestic situation that develops into a larger situation than the officer expected. The secure holster will prevent that accidental removal, resulting in something that was not contemplated—either the individual using the officer’s gun or the officer using it. The security feature far outweighs the visibility of a greater portion of the gun butt.

The demonstration for you gentlemen here is educational in regard to that feature. You will, I trust, convey that message when you are asked to say that you are a believer, if one wants to put it in those terms. The same will apply through the police commissions, through the officers in their use and any other methods.

Mr. Breithaupt: I do not know whether we are

believers but I think we understand a little more.

Hon. G. W. Taylor: I would not want to be buying commercials on television.

Mr. Breithaupt: Not for that purpose.

Hon. G. W. Taylor: We run into two schools of problems. First you are drawing attention to the gun, the holster and implying that the police officer is a gun-carrying individual. That is far from the total aspect of the performance of police duties today. There are greater aspects than that; it is for the security of the officer. I would not want to get into a situation where the performance of the holster became the sole purpose of the experiment.

11:20 a.m.

Mr. Chairman: Mr. McBurnie or Corporal Adamson, would you confirm or otherwise that the radio or walkie-talkie that is worn by most officers is American made and was designed to be worn on the left side, but under current regulations is now worn on the right and therefore is backwards with the controls at the back and the antenna at the front, which again restricts the officer's right arm in the present left-side, off-side holster.

Corporal Adamson: That is correct, Mr. Chairman. It is being worn on the wrong side.

Mr. Breithaupt: What percentage of police officers happen to be left-handed?

Corporal Adamson: I have no idea.

Hon. G. W. Taylor: I knew we forgot something. You are very critical; they have done a fine job and you have asked the one question we did not have the answer to.

Mr. Breithaupt: It is an interesting idea; because you talk about the stronger arm, which is ordinarily the right arm, but I would think for a constable who is left-handed, as with many other aspects of this world things could be much more awkward with the cross-draw situation.

Mr. McBurnie: By the way, some forces are not even permitting him to make any change, even if he is left-handed as I mentioned. If he wears the holster here with the butt facing the front his force says, "Too bad, you draw it this way," because we all wear it on this side.

With this style of holster, it will be worn on his left-hand side if that is the strong-hand side.

Mr. Breithaupt: The holster is made in reverse patterns.

Mr. McBurnie: In reverse patterns, just as there are golf clubs for the left-handed person.

Statistic-wise, we have about 32 people in a class at any one time, and approximately two officers out of those 32 would be left-handed.

Mr. MacQuarrie: They are the naturally superior ones.

Hon. G. W. Taylor: In further response to Mr. Breithaupt, the Ontario Provincial Police are also testing them for their women constables as well.

Mr. Breithaupt: Yes, that is another point we did not talk about. Presumably this would be an advantage for women serving on police forces, given the lack of the cross-draw situation.

Mr. McBurnie: That is correct. From the few comments I have heard, the policewomen were very satisfied with the comfort of this security holster.

Mr. MacQuarrie: My question deals with the release mechanism or the security aspect of the holster if you will. Is there any possible way to activate that mechanism other than by the officer in the course of removing the revolver?

Mr. McBurnie: There is nothing that comes to mind at this time. It cannot be done by sitting down in a chair like the other one would with the flap catching on an arm, or if you are running and in some cases the officer is hitting the top of the closed flap and it releases.

Mr. Breithaupt: The door handle of a car.

Mr. McBurnie: Yes, the door handle of a car. Because of the close proximity of this one to the officer's side, it must be pushed deliberately inwards, towards his body.

Mr. MacQuarrie: The case that comes to my mind is that of an officer who goes after a rabid wolf, with his gun out, and slips on ice and falls and the gun goes off and so on. Would a fall like that, on his left side, cause the mechanism to activate?

Mr. McBurnie: No.

Mr. MacQuarrie: Would there be a problem for an officer going through dense bush, brushing against fairly heavy stuff?

Mr. McBurnie: I would say it is probably 100 per cent better than the other one, because you have more chance of the other model becoming undone accidentally in crowds or brush. That is part of the problem with security.

Mr. Mitchell: Perhaps the corporal could stand up once more, since he has that holster on, and demonstrate the release on it?

Corporal Adamson: It comes in towards the

body, into the hollow of the side, pressed to the body.

Mr. Breithaupt: And knocks out the other side of the strap.

Corporal Adamson: The basic element is to the inside.

Mr. MacQuarrie: I was thinking of tumbles or falls.

Corporal Adamson: I have done self-defence break falls with the weapon on. Even with the release, the weapon stays in the holster.

Mr. McBurnie: By the way, if you tackle the officer and pin him to the ground on his front or you slam him with his face against a wall, all the officer has to do is put his right hip into the ground or his right hip against the wall, and you cannot draw the revolver out.

Mr. Brandt: Can you pull that leather flap without engaging that release mechanism?

Interjections.

Mr. Renwick: First, I want to say to Mr. McBurnie and Corporal Adamson that I appreciate, and I am sure the other members do, the professionalism of the demonstration which you have given to us. My questions are not related to the concern about the professional way in which the demonstration has been conducted.

I guess I have to come back to the question which I thought I had properly addressed to the chairman of the Ontario Police Commission about the nature of the tests. I want to separate the question of whether or not a decision that this is the best can be sold to the public as an acceptable way of doing it, having regard to both public perception and local autonomy and what it is called and all the rest of it. I think there has been an immense confusion here this morning between the two matters.

Assuming for a moment, Corporal, that the OPP is the province-wide force that is exposed to every conceivable set of circumstances of use in equipment that you wear and situations you encounter and additional equipment that you use and so on, is there a series of rigorous tests being conducted with respect to the use of this particular holster—and indeed the weapon itself, if there are questions about the weapon—in the varying climatic conditions across the country, in the various types of equipment and clothing that officers must wear at various times, in respect to the various vehicles that they are involved in using and so on, so that, apart altogether from public perceptions, there can be the kind of report made that will indicate the

kind of rigorous tests that a piece of military equipment, in theory at least, undergoes in a country such as Canada?

Can we have some sort of assurance about that, apart altogether from this question of whether the public will accept, over a course of time, a change to a different weapons installation facility?

Mr. McBurnie: Maybe I could give some assistance there, sir. I know that the departments are trying them out in actual field conditions. We in the college, who are not out in the field, ask, "Who are we to say this is the most ideal holster?" We want the forces to go out and try them in high-density areas, in cars, in snowmobiles, in the quiet areas, in boats, and ask themselves, "Is it comfortable?"

Mr. Renwick: We are talking about the same thing.

Mr. McBurnie: In other words, tear it apart if they have to.

Mr. Renwick: All I am concerned about is that I have no sensation whatsoever from the chairman of the police commission that that kind of field testing of this was being done.

Mr. McBurnie: Yes, it is.

Mr. Renwick: All I had was, "Well, fellows, try these out somehow or other." There is no way in which the information is going to come back to say they have had these rigorous kinds of—as you say in a much more succinct way—field trials in all of the circumstances of the differentials of police activities across this vast province.

Mr. McBurnie: That was one of the ideas of the police commission in putting it out to the various police departments, both in size and enforcement areas, because of the tremendous variety of field conditions involved. That was one of the examples of the 38 police departments being involved at the present time, sir.

Mr. Chairman: Deputy Commissioner Ferguson, I believe, has a report and something he can share with us on this.

Hon. G. W. Taylor: He is the deputy commissioner of the Ontario Provincial Police. He might explain to you, Mr. Renwick, the extensive field testing that is at present going on, and the style, manner and method the Ontario Provincial Police are using to determine the usefulness of the—

Mr. Renwick: I must have touched a sensitive area, because there was agitation around immediately to allay my concerns.

Mr. Hilton: We just want to give you the best information.

Mr. Renwick: Yes, I understand that.

Mr. Brandt: It happens with all of your questions.

11:30 a.m.

Deputy Commissioner Ferguson: Mr. Chairman, when we began looking at the safety holster, we felt exactly as you have indicated—that we must test it to see whether it would be acceptable in our northern climate and in our southern areas. Consequently, we selected the holsters we were looking at—I believe there were four different makes—and we sent them out to our field locations. A number of them were tested in Thunder Bay during wintertime; our motorcycle riders in Downsview tested them; we attempted to test them in every weather condition, under every condition possible.

In an approximately three-month test period, the safety holster that has been demonstrated here today certainly appeared to be the best of the lot. There were no problems that could not be rectified in that particular holster.

As I recall in the report, it was suggested that a plastic tab on the holster, the Rogers Boss-type holster, could be defective in the cold weather. There has been a recommendation that that could be replaced with spring steel rather than plastic. At this point, we have now called our holsters back in again.

We are completely satisfied that our people who tested them found the Rogers Boss holster was by far the best and found no problems whatever with it, in riding snowmobiles, in cold weather, in warm weather, or in riding motorcycles. Every conceivable test we could put to the holster was done. It proved very satisfactory.

Mr. Renwick: My last comment is that I think it is absolutely essential that you, sir, as the minister, or Mr. MacGrath, the chairman of the police commission, take some extremely positive initiatives to call in the manufacturers of leather goods in Ontario or in Canada and acquaint them with what the specifications are and what the opportunities are, so that it not be left to some kind of hit and miss as to whether somebody stumbles on this as a possible market.

I think it would be very upsetting to me in the riding I represent, and I am sure to other members, to think this field of possible business would go by default to the United States. I see nothing anti-American in saying that those

holsters could be made here, but it would take time for that kind of expertise in manufacturing to develop, to do the catch-up which is involved in it. I do not know who is responsible, but it would seem to me that you must take the initiative as the minister, whether you do it through your colleague the Minister of Industry and Trade (Mr. Walker) or however you do it, to make them aware of this possibility.

As Mr. MacQuarrie said, there is no patent obstacle to the licensing question. The processes are there. I just think it absolutely essential.

Mr. McLean: I have a question, Mr. Chairman. You indicate your belt has to be heavier or double. How are your plainclothes people going to wear that holster? Are they going to have to wear the double belt on their dress clothes?

Mr. McBurnie: This is something we are particularly looking at for the uniformed officer. It is also a good point that should be looked at for the plainclothes officer. It is possibly going to be somewhat bulky in some cases, but there is a total lack of security in some of these holsters worn by the plainclothes officer. That would be a concern of ours, also. Possibly that could be looked into as well.

Mr. McLean: What do they wear now?

Mr. McBurnie: There are all kinds of mishmashes of cheap holsters, dangerous holsters, with some of them having a total lack of security whatsoever.

Mr. Mitchell: Clip-on types and so on?

Mr. McBurnie: All types; clip-ons and goodness knows what.

Mr. Chairman: Thank you very much, Mr. McBurnie and Corporal Adamson, for the demonstration this morning. Deputy commissioner, you will be staying in the room.

Mr. Brandt is not here, but I will perform his usual function. We have approximately three and a half hours left. To have some formality in the remaining hours of the estimates, and keeping in mind that the chairman does have the authority under the standing orders to apportion time, can I hear from all members right now as to particular concerns they have and particular items they want to address?

Mr. Brandt is not here. Mr. Brandt had certain matters he wanted to deal with. I would like to get some general idea where we are going. Mr. Renwick and Mr. Brandt have advised they want to look at 1703, item 1, which is the Ontario Police Commission, to raise matters related to local commissions.

Are there any other specific—

Mr. Renwick: Mr. Chairman, we did not pass the fire votes.

Mr. Chairman: No. I am trying to get ahead, trying to find out where we want to go and how much time we can apportion.

Mr. Mitchell: Mr. Chairman, with Mr. Brandt not here, I know that was one of the items he wanted to cover, and you have obviously been made aware of it. The police commission is one area that is of concern to him and to myself, and I am sure Mr. MacQuarrie has some questions in that regard as well.

Mr. Chairman: Law enforcement: is anyone interested in law enforcement, where the bulk of the money is? The OPP?

Interjection.

Mr. Chairman: How are we going to apportion our time? I am not going to permit, unless I am overruled, a complete bog-down on 1702, item 3, fire safety services, so that we have no time left for members wanting to discuss other matters.

Mr. Renwick: There is no intention of doing that. You have to have more confidence in your colleagues than that.

Mr. Chairman: Past history, Mr. Renwick, would not sustain such confidence.

May we say that by 12:30 p.m. we will be through with vote 1702, which will only leave about two to 2½ hours for the balance of the estimates?

We are all over the place in vote 1702. We are in item 3. There are various persons—Mr. Spensieri is waiting patiently to deal with item 1 and item 2. Can we then pick it up at vote 1702, item 3, complete that and then go back and take things in order and carry each item as has been the past practice?

We stopped off with a quote from Mr. Renwick—actually we were really just starting on item 3. Mr. Renwick, would you please carry on with item 3?

On vote 1702, public safety program:

Mr. Renwick: Mr. Chairman, I have become interested over time, in strictly a reading sense, in fire problems, although I do not want to delay the work of the committee unduly in this area.

However, I am particularly anxious, with the fire marshal here, to get some sense of the situation on two or three matters. I would appreciate a comment by the assistant deputy minister or the fire marshal on the extent and degree to which we, as members of the assembly, should be concerned about the arson ques-

tion, both with respect to the nature and extent of it and with respect to the capacity of the fire marshal's office and the fire departments in major centres in Ontario to deal with the question of arson.

What should be the degree of our concern, ranging from no concern to anxiety, on a scale of one to 10?

I think at the time this matter was first raised, at a time when there were serious arson problems in Quebec, we were assured that it was not a problem here. Since that time there has been a significant increase in arson, so that I think it is now a matter that should be dealt with, from my point of view, quite succinctly in response. I want a capsulized, though valid, judgement on that question.

11:40 a.m.

Hon. G. W. Taylor: Mr. Renwick, I have always enjoyed the way you put your questions, and you have given us great latitude in answering this one, given the scale you have used. I think I will defer to the Ontario fire marshal, because I would just be regurgitating the statistics that are placed in this book for me. They will be far more familiar to the Ontario fire marshal and to the Deputy Solicitor General, from the point of view of the magnitude of the problem and what is being done in preventing arson, investigating suspected cases, assessing dollar loss and the general procedure followed in preventing and discouraging arson. So I defer first to the Ontario fire marshal, Mr. John Bateman.

Mr. Bateman: Thank you, Mr. Minister.

Mr. Renwick, I think we can be relatively pleased to look at the trends over the past two years, which appear to have involved some reverses from an arsonist point of view. We had a brief decrease of about 11 per cent in 1981 over 1980, although in comparing 1980 to 1979 the arson rate across the province was approximately the same. The dollar figures, however, have been going up each year, largely because of inflation.

Prior to 1979, arson was causing some paranoia in our office. There was cause for concern verging on panic. At one point—I believe 1978 over 1977—it went up some 20 per cent. That appears to be reversed, although I am still concerned that we are not conducting all the investigations we would like to conduct. We have more requests for investigations each year than we have staff to carry out this task.

I would like to think the number of arson fires

could be reduced even further if we did have the staff available to translate investigations into convictions. Generally, however, I am certainly more optimistic about the arson picture than I was two years ago.

Mr. Renwick: I do not want to pursue it. The minister heard the comment and so on, and it is being dealt with.

Hon. G. W. Taylor: I think it is being dealt with.

Mr. Renwick: The capacity of the fire marshal's office to cope with the demands which are made with respect to investigations is an old topic before this committee, and I am not going to indulge in rhetoric on it. I just want to register my extreme concern about the need for an additional complement of people for the fire marshal's office.

Hon. G. W. Taylor: Indeed, too, there have been improvements in techniques, as Dr. Lucas, when we get to his vote, will indicate in regard to the forensic laboratory; and the same holds true of the Ontario Fire College. They are improving their methods.

Further, there is the added probe, in the initial investigation, in bringing the police into the matter along with the fire marshal. This approach, the deputy minister informs me, is reducing the occurrences. That is all I can say at this time.

Mr. Renwick: I think the scope of that is something that deserves your attention. When we get back to your estimates next year, that is an area on which I would like to have a fuller statement, rather than attempting to put questions in areas where we can only bring to bear the rather limited knowledge of lay persons.

The second area on the fire matter—and I want the chairman to feel comfortable, so I should stress that I only have three matters in the fire area—stems from the fact that I wrote away for this National Research Council of Canada study on Fire Prevention and Control Systems in Canada. I recognize that it is a Canada-wide study and that Ontario not only undoubtedly is foremost in all fields of fire protection but should be, and so on. There are, however, some disturbing comments. I would appreciate having the observations of the fire marshal or his assistant on these matters.

I am not going over each of them, but in the executive summary of the study's findings there are two principal points, and there are two or three others on which I want a comment. The study confirms major conclusions of the ad hoc

committee, which was the forerunner committee.

"There is a critical weakness in data upon which to develop an attack on the problems of fire protection, as little has been done in research or data collection in Canada. The fire loss statistics picture is improving, but extremely slowly, and much basic useful data still are lacking.

"The deficiency in statistics may be taken as indicative of the long-term lack of concern for the fire problem on the part of governments. The information weakness is carried through to areas of evaluation of new equipment and methods, and to the inadequate central resource of data, technology and engineering that could be made available in the field.

"There is a lack of concerted attack on the fire loss problem. There is, in fact, no real co-ordination of the various agencies and forces engaged in this battle. The many elements in this system, including about 3,300 fire departments, are fragmented, lacking in clear common objectives and competent guidance; being without a strong voice they are often unheard by government."

Then it goes on: "In addition, the study has drawn several fundamental conclusions as to conditions and overall organization of the fire protection system." I am not going to elaborate on the seven or so recommendations that were made, or the interesting, and I believe informative and helpful matters that are raised here.

I do have a continuing concern about what they say in the area of statistics. I would like to ask about the state of statistical information, assembled in a sophisticated way, dealing with fire matters in Ontario. Second, I would like to ask whether or not it is now appropriate to ask the Provincial Secretariat for Justice, as staff there has done such yeoman work, at least in the crime statistics field, whether focus could now be turned to the fire statistics question in Ontario, since such activity is indicative of governmental concern, being as it is one of the first tools government uses?

If there are no statistics, it usually means everybody is still dealing in anecdotal terms about serious problems and not in a sophisticated manner.

Hon. G. W. Taylor: Mr. Renwick, I know I have just recently received numerous books containing statistics from the Ontario fire marshal. Mr. Bateman, can you explain how those are developed, what is your source and how they are used?

To give you the background on the ones I have seen, they are produced by the Ontario fire marshal's office and they are the red-and-white-covered books that contain what seems to me to be a fair depth of statistics.

Will you explain to Mr. Renwick when they were produced, how they are produced—the whole package?

Mr. Bateman: Ontario is now on a national statistical system. We were on our own up until 1976, as were most other provinces. Prior to 1976 that was one of the prime topics of discussion every year when the fire marshals and fire commissioners across Canada gathered together. It took about 10 or 15 years of debate and discussion to get agreement on one nationally approved system, which we and most other provinces now have adopted. One senses that on the much smaller scale of the fire scene there are the same problems that you get in other national areas. Quebec and one or two smaller provinces, for example, have not gone the national route, but most of us have it.

11:50 a.m.

It is a system that has some 1,800 codes. It has caused the fire departments across Ontario some great concern in understanding the techniques of properly making out the forms and submitting them and the meaning of the codes, and so on. We have been working with them for the last five years. We have been improving their report forms and we are now at the stage where we can make meaningful comparisons of the data we are receiving for 1981 and 1982 with the 1976 data.

The statistics we are getting now do not have too much in common with the type of information that we obtained on our own prior to 1976. That is sort of the base line. We are quite happy with the system and so are the other provinces that use it. We think it is an excellent basis of comparison.

Mr. Renwick: What sort of information is this? Is it available in a form so that the committee could receive a copy of it?

Mr. Bateman: Yes, indeed it is.

Hon. G. W. Taylor: The documents I have I will send over to you which will produce a very visual picture for you of what is being put together at present.

Mr. Renwick: That would be extremely helpful to me.

My third and last point about the fire question is that there is some evident concern in this National Research Council study about the

status of the fire marshal in relation to the overall fire system in the province. I suppose one can make the comparison between the relationship between the Ontario Police Commission and the authorities and powers that it has, to the extent that they ought to be termed authorities and powers, and the fire marshals Act.

I took the liberty, again because of an interest in the matter, of reading the fire marshals Act and that other strange act, the Fire Fighters Exemption Act. I would ask the minister if he, along with his deputy and assistant deputy and the fire marshal, would have a good look at the fire marshals Act to see whether or not the total lack of authority in that statute for the fire marshal should be in any degree remedied; whether or not there is a place in Ontario, if there are any members of your party free who have not been appointed to some board or commission, whether or not it would be possible to give consideration to a fire commission for Ontario and to have the fire marshal as sort of the chief executive officer of that commission, so that he has some backing in bringing to the attention of the public the concerns in the fire field. At least, would you review it?

As a secondary part, to my astonishment the Fire Fighters Exemption Act provides the method for public complaint about individual firemen or forces. Until the other day I had never read it. It has one paragraph which I guess is very seldom, if ever, used.

Perhaps you would comment on those two questions, the complaints against fire departments and the possibility of a good hard look at the fire marshals Act and an improvement in the status and role of the fire marshal, perhaps supplemented by a small commission to give the fire marshal the kind of in-depth support he obviously needs.

Hon. G. W. Taylor: I think that can easily be done in reviewing them in the light of your comments, Mr. Renwick. I shall undertake to have them reviewed.

Mr. Renwick: Just as a curiosity, did anybody ever use that one paragraph, the fire complaints procedure?

Hon. G. W. Taylor: I have been informed by the Ontario fire marshal that the complaints feature has never been used.

Mr. Renwick: Some day when my colleagues on the committee have nothing else to do they might look it up and read it. It will only take

about 10 seconds to read it. It is an amazing statute.

Mr. MacQuarrie: I am not familiar with anything but the name of the statute. What sort of complaints procedure did it have?

Hon. G. W. Taylor: The Fire Fighters Exemption Act, subsection 2(1) reads:

"Upon a complaint to the council of neglect of duty by a member of such fire company, the council shall examine into the complaint and, for any such cause and also in case a member of the company is convicted of a breach of any of the rules legally made for the regulation of the company, may, after a hearing, strike off the name of any such member from the list of the company and thenceforward the certificate granted to the member has no effect in exempting him from any duty or service."

What that refers to is that the first section of that regular act allows him exemption for jury duty.

Subsection 2 reads: "The member of the fire company against whom the complaint has been made and the complainant, if any, are parties to the hearing under subsection 1."

Mr. MacQuarrie: Speaking from my own personal experience, Mr. Chairman, I do know that complaints against individual firefighters and against the fire department's performance have been dealt with by the municipal council of which I was a member, not necessarily under this statute but just by complaints from ratepayers.

Mr. Renwick: I do not want to delay this; I was just curious about that.

Those are my only comments on that. I have two brief comments on the coroners.

Mr. Chairman: I think Mr. Mitchell is up next. Did you wish to speak to the fire vote?

Mr. Mitchell: Yes, Mr. Chairman. Perhaps the minister can advise me, and I do not wish to put in jeopardy a specific case that is currently on my desk, but you have a staff of professional engineers under this department who provide technical assistance, and so on, to municipalities, firefighters and so on.

The particular concern that I have is, what does your office do to the extent of looking at the types of materials, since it has now been taken out of the building code branch, if I am correct. What do you do about looking at materials that are in buildings, and the effect on individuals of those materials burning?

I have a particular hangup of recent weeks because, as I say, of a specific situation where a

person was involved in a fire where polyvinyl chlorides were burning, and there seems to be a complete lack of interest in the problem, which I understand could be, and perhaps is, a major one.

Hon. G. W. Taylor: Mr. Mitchell, I will assure you that there is an interest in it. Tests of the nature of those you were mentioning are performed on some products, not all. They are performed through the Ontario Fire College, and I believe the Centre of Forensic Sciences will conduct some tests at different times, but not in regard as to whether the product should be used or not.

I will have the Ontario fire marshal explain more elaborately to you the functions and duties, in a better practical way I hope, that his engineers perform and their relationship to testing materials, particularly in regard to fires.

Mr. Mitchell: Just before he does that, may I then ask if that department does any liaising with the Workmen's Compensation Board, or other areas, which might be dealing with a problem of a person who has been involved in that sort of situation?

12 noon

I will tell you quite frankly that I have been finding what appears to be, and I am being quite honest about it, a complete lack of understanding of the effects of this material burning. I cannot use names because there is an appeal going on, but it seems to be being brushed aside. This person was directly involved in a situation where PVCs were burning. I do not find any interest in it other than perhaps a cursory one.

Mr. Bateman: If I may, Mr. Mitchell, I will attempt to shed some light, although perhaps not very much, on the general problem of burning plastics. I suppose I should first say that indeed the building code still does have the legislative jurisdiction for products that are a part of a building.

Mr. Mitchell: I agree with you.

Mr. Bateman: If we are talking about seats, upholstery, draperies and so on, they do come under the fire code.

Mr. Mitchell: That is the area that I was talking about, if you want, the ancillary items within an area.

Mr. Bateman: Right. For as long as I have been with the fire marshal's office, the governmental fire authorities have been trying to get some sort of tests that would realistically measure the toxicity of burning plastic products.

without any degree of success whatsoever. As I say, there have been tests but none of them have been realistic tests; none of them would, for example, adequately compare the PVC covering that we have on this desk with the polyurethane padding on the seats, or the ABC plumbing piping under actual fire conditions.

By far the greatest toxic product of combustion is, of course, carbon monoxide, which you get from any material that burns. But you do get others such as cyanides and so on; in fact, wool is one of the worst producers of cyanide—wool carpets.

So there really have not been any usable tests that have been developed. What fire authorities have tried to do, and I have worked on building and fire codes for years, is to try to limit the amount of plastic material in the building, or plastic furnishings in the building. I must say that I am extremely concerned that we have not been that successful.

Mr. Mitchell: You mentioned, Minister, that there is some interaction between your Centre of Forensic Sciences and this branch. Have there been any tests done in the Centre of Forensic Sciences on situations where death has occurred in a fire but where the body itself may not have been burned? Have the internal organs been examined thoroughly to be able to recognize damage that has been caused by certain materials burning?

Hon. G. W. Taylor: May I ask Doug Lucas to come forward? He is the director of the forensic sciences laboratory and he might explain more fully the tests that they perform and the results of these tests.

Mr. Mitchell: As I say, I am raising these questions because I have a specific ongoing problem at this moment over that very business of PVCs and the effect on an individual.

Hon. G. W. Taylor: We did not answer the question between the two gentlemen here as to what liaison goes on, as you mentioned, between the Workmen's Compensation Board, as you mentioned, or other bodies—

Mr. Mitchell: Exactly.

Hon. G. W. Taylor:—whether there is any liaison with the information being transferred back and forth.

Mr. Lucas: Mr. Chairman, yes, there are tests done in fire death cases. In virtually 100 per cent of such cases the coroner would order an autopsy and tests for toxic materials would be done.

The two materials we routinely look for in fire

deaths are cyanide and carbon monoxide. We can look for hydrochloric acid in a PVC death if there is some suggestion of that. Those reports go to the coroner, to the fire marshal; and subsequently they would be available through the coroner's office to the Workmen's Compensation Board, for example, and so on.

We have also done test burns of structural fires in co-operation with the fire marshal's office and monitored the gases produced. I can tell you with all candor, however, that as Mr. Bateman has said the gas that is the most toxic is carbon monoxide. We rarely see a significant level of hydrogen cyanide. We find cyanide, but we do not find it to be significant relative to carbon monoxide.

Mr. Mitchell: I would not argue with your findings, but you say you routinely examine for certain things and that information would routinely be made available. My difficulty is that I am not sure that information has been made available.

Perhaps, Mr. Chairman, you may rule me out of order, but as a matter of interest for myself, in what way would the effects of exposure to burning PCBs show up in a body?

Mr. Lucas: From our point of view, in examining the tissue chemically for various foreign materials, if we were tracing the effects of exposure to burning PCBs we would look for hydrochloric acid. Now whether there are microscopic manifestations of inhalation, I am afraid I cannot say, that would have to be answered by the pathologist who did the autopsy.

Mr. Mitchell: Not to prolong this, but would it show up, for example, distinct from carbon monoxide? Would carbon monoxide cause extreme and continued inflammation and so on in the bronchial area? Would such symptoms from exposure to carbon monoxide clear rather quickly and that resulting from burning PCBs be apt to be more long term?

Mr. Lucas: Yes, I would think the effect of hydrochloric acid would be more long term than carbon monoxide.

Mr. Mitchell: Thank you, Mr. Lucas.

May I just wind up with a comment. To reiterate, I am obviously involved in a specific situation here, but I have found that at times there appears to be some lack of communication.

I can say, I think without endangering what might be going on, that my interest in this area arises from the fact that a fireman was involved in this particular situation. In attempting to

assist him through his encounters with the WCB, the responses I have been getting seem to be that even though material was provided for them, background research that had been done on PCBs, the interest did not seem to be there; although perhaps I am misjudging them.

With that in mind, I would like to be assured that in fact whatever work is done within this branch of the ministry, that if there are effects on the human body that would be of some assistance in decisions to be made by other people who are dealing with the results of such effects—and I think specifically of examiners at the Workmen's Compensation Board where they are dealing with people who have become incapacitated, that this information is more than just available to them if they ask for it but is something that is provided to them as a matter of course.

Mr. Chairman: I take that as a comment rather than a question.

There being no other persons wishing to speak on this subject—Mr. Brandt, at this point I want to carry the first three items of vote 1702, have you completed on those?

Mr. Brandt: Yes, thank you.

Items 1 to 3, inclusive, agreed to.

On item 4, coroners' investigations and inquests:

Mr. Chairman: Mr. Renwick has indicated he wishes to speak to this item.

Mr. Renwick: Mr. Chairman, I have two matters related to the coroner's office that are, I suppose, heavily weighted in the legalities of the method and my own experience in connection with one instance of it.

12:10 p.m.

My first point is a very succinct one. I am not asking you to tell me that you will or will not, but only that you will look at it.

This arises from a specific case of a matter which affected a constituent of mine in relation to the death of his sister, his dissatisfaction with the fact that there was not an inquest and the attempt I made, over some time, to try to get an inquest into the death of the sister. I am not going to go into the anecdotal part, other than to say that is the basis for my request. It has a somewhat wider ramification.

There is an obligation, as everybody knows, on a coroner to make certain decisions with respect to whether or not an inquest is or is not necessary.

The act, in a strange way, states that: "Where the coroner determines that an inquest is unne-

cessary, he shall transmit to the chief coroner and a copy to the crown attorney,"—etc., "a signed statement setting forth briefly the result of the investigation and shall also forthwith transmit,"— etc., and so on and so forth—"a signed statement setting forth the result of the investigation."

Those are the words I would like to have italicized for the purpose of my discussion here.

Then it goes on further: "Where the coroner determines that an inquest is necessary, he shall issue his warrant and forthwith transmit to the chief coroner, and a copy to the crown attorney, a signed statement setting forth briefly the result of the investigation"—you will notice these words are identical with those used when they decide it is unnecessary. But then it goes on, "and the grounds upon which he determined that an inquest should be held."

The next section of the act describes those various circumstances: "When making a determination whether an inquest is necessary or unnecessary, the coroner shall have regard to whether the holding of an inquest would serve the public interest and without stricting the generality" and so on, "shall consider certain matters."

The distinguishing words are that the signed statement in the one case sets forth the grounds on which he determines that an inquest should be held, but the signed statement required where it is not deemed necessary to hold an inquest does not contain any statement about the reasons he concluded that the inquest is unnecessary.

So I, in my naivety, went with my constituent, with the co-operation as always of the chief coroner's office, to the chief coroner's office to look at whatever file was available. Of course, all I found was the particular certificate, which is a form—form 3 under the act—stating, "I have investigated the death of so-and-so at such-and-such a place, and so on. The result of my investigation is as follows." But then no statement, succinctly put or otherwise, of the reason he considers it unnecessary.

I think that is a very serious default in the Coroners Act. He should be required to state the reasons he has concluded that no inquest is required, as a counterpart to the obligation to indicate, when an inquest is necessary, the reason for determining that it is necessary.

I say that because he has to direct his attention in each of the cases to the following matters, whether the matters described in clauses (a) to (e) of subsection 25(1) are known, that is:

"Who the deceased was, how the deceased came to his death, when the deceased came to his death, where the deceased came to his death and by what means the deceased came to his death." That is the first part.

Then it goes on, and very wisely the assembly amended the act to add these requirements: "(b) the desirability of the public being fully informed of the circumstances of the death through an inquest; and (c) the likelihood that the jury, on an inquest, might make useful recommendations directed to the avoidance of death in similar circumstances."

I cannot believe it is not a wise amendment to consider for the section—I am using the preconsolidation statute, but I am sure the clauses are readily identifiable in the revised statute. The amendment I contemplate would be to the effect that when a coroner determines that an inquest is unnecessary, he be required to make available, "in addition to the results of his investigation, a statement as to why it is not in the public interest for an inquest to be held," or whatever the appropriate language would be.

I say that quite advisedly, because in another matter I had to get an outside legal opinion on a couple of questions. I will not quote the part that is unrelated to my concern, but in the relevant area the lawyer's opinion states this: "Section 17 of the Coroners Act 1972 provides that"—it is the same clause which I read. "Section 17a of the act further provides that"—and I made reference to that so I am not going to repeat those provisions.

Then this statement is made: "Once the determination in compliance with section 17a is made, the coroner must prepare, sign and submit a statement, form 5,"—which is the correlative to form 3 which I was referring to earlier—"setting forth the results of the investigation and the grounds upon which the coroner determined that an inquest should be held."

I would think the other aspect of it would be "and the grounds upon which the coroner determined that an inquest should not be held." I have interpolated those words, because I want to emphasize this: "In other words, the statement is a record of the matters determined by the coroner requiring a hearing. The preparation and signing of that report by a third party"—I am not going into that, that is separate.

"However, the sections are quite clear that the determination whether to call an inquest and the grounds upon which the determination is made are exclusively the authority and function of the coroner. There is no provision in the

act for the delegation to others of that decision-making process."

I think that is the first point. I am not asking for a discussion. The record would indicate clearly my particular concern.

Hon. G. W. Taylor: I notice the difference you have set out regarding forms 3 and 4 in application up to section 20; and naturally forms 3 and 4 would include (a), no matter which way you are going—that is 20(a)—whether you are going to hold an inquest or not, because section 20(a) is statistical and factual.

But under (b) and (c), under form 3, one would have to come to the conclusion that you, I think, would want the reasoning process and the factual process culminating in the coroner's decision to exercise either (b) or (c) subsections of 20, not the fact that you would check in another square, I guess, saying if you were to complete it similar to 4, where you would continue on in the example you gave if you revised form 3 you would say:

"The grounds upon which I determine that an inquest should not be held are as follows:

"B-20: The desirability of the public being fully informed of the circumstances of death through an inquest are not in my opinion necessary." I do not think that is what you want.

Mr. Renwick: No.

Hon. G. W. Taylor: I think you want the reasoning process as to how he arrived at (b) or (c), the likelihood of a jury inquest. Is that what you are directing your comments to?

Mr. Renwick: I think there should be an enlargement of what is in the 1972 act, form 3. I think the form 4 you are referring to is probably what was form 5 under the old act and is now form 4 under the new act—in any event, the inadequacy of the coroner's investigation statement where an inquest is unnecessary, as compared with the adequacy of the coroner's investigation statement where an inquest is to be held; that question, I think, is extremely important.

12:20 p.m.

When I took my agitated constituent to the coroner's office, I assumed the document which was available to the public, that is that certificate of the coroner, would be the kind of document that would indicate to him that here is a person who is charged with a responsibility, who has looked at the matter and has made a firm determination which is visible on the record as to why an inquest is not necessary. In so far as providing information which my con-

stituent was seeking is concerned, in the concern which was being expressed—this happened to be a death in a nursing home and so on—the form said nothing to him. I would ask that what to me is an omission in the statute be clarified.

Hon. G. W. Taylor: I can see your concern. I just did not want to stop at that point. In going back through Hansard to see how they arrived at section 20(b) and 20(c), which is what you are now discussing. Even if they completed it as at present and improved the form, section 20(b) and (c) would be the ultimate now. What I get from you now is that you want the full reasons for arriving at a decision under (b) and (c).

Dr. Ross Bennett, the chief coroner of Ontario, is before the committee. He might possibly also explain some of the background on the form.

Dr. Bennett: Form 3, Mr. Renwick, has two parts. The one part goes along with subsection 18(2) which—we are having problems with numbers here, because you are using an old—

Mr. Renwick: I am not worried about that.

Dr. Bennett: Well then, subsection 18(2) outlines what information shall be given to the next of kin. That is what is in the first part of the form.

The second part of the form is a narrative by the coroner explaining the circumstances of the investigation, what his final decision was and why he is not holding an inquest. In virtually every case the coroner does put that in the report, but that is not given to the family, whereas in section 26 of the new 1980 edition it outlines how a family can obtain that information by writing the coroner and requesting an inquest. He is obligated to reply in writing explaining why he does not feel an inquest is necessary.

Mr. Renwick: I do not want to labour it. The point is clear. I wanted amendment to the provision so the form which the coroner completes when he goes through the process—and he has to go through the identical process, he has to decide in each case whether it is necessary or unnecessary, but when he decides it is unnecessary the form which is available to the public will clearly state why he considers it unnecessary. That is what I would like to have. I think there is very real merit in this.

First of all, however, let me congratulate you on your appointment. I have not spoken with you since then, but I actually think you were the one who produced the file for me some years

ago in a case to which I referred. You would not recall it but it has been in my mind.

The second point is identical with the point on which I had the long-drawn-out, acerbic argument in the public press, which nobody but the Attorney General (Mr. McMurtry) and I would recall, in the case of the Evans inquest. No charges had been laid, and yet there was no inquest held.

The idea was that there was a police investigation going on and that somehow or other this supplanted the provisions of the Coroners Act. Try as I might, I could not indicate that not only did it not supplant but the Coroners Act actually foresaw such circumstances and said that when a charge was laid under the Criminal Code, any inquest that was continuing should be stayed until the determination was made of that matter, and on the other hand, that if a charge was laid, no inquest could be held except on the direction of the minister.

However, prior to a charge being laid, or in circumstances where no charges exist, it is not up to the Solicitor General to make a decision, that the coroner's duty and responsibility, which is individualized under the statute and is not a matter which he can delegate nor can he be interfered with by the Solicitor General, is that he must make a decision about the inquest.

I have not studied and I do not want to open the question of the deaths of the children at Sick Children's Hospital. My understanding is there are no charges outstanding against any person in connection with those deaths at the present time. I was astounded when I tried to read, in very small print in the *Globe and Mail* this morning, the responses to the various questions, apparently raised by the *Globe and Mail* with the Minister of Health (Mr. Grossman), to which he very properly responded.

I have not studied them at any length, but I cannot understand why there is not now an inquest being conducted with respect to the deaths at the Sick Children's Hospital pursuant to the Coroners Act. I may have missed something. There may be some section of this act which puts me completely out of court in my argument, but I am saying to you that as I read this act, the coroner must make a determination as to whether an investigation is or is not necessary. Where the coroner determines that an inquest is necessary, he will issue his warrant for an inquest. Where the coroner determines that an inquest is unnecessary, he shall take the appropriate steps.

Therefore, my first question is: Has any

coroner made a determination of whether or not an inquest is or is not necessary into any one or more of the deaths at the Sick Children's Hospital. My second question is: If a determination specifically has been made, I would like to know that. Since there has been no announcement that an inquest is being conducted, I would like to understand how any determination was made in the first place, if made; and if not made, how the coroner can avoid his clear statutory obligation that "when making a determination whether an inquest is necessary or unnecessary, the coroner shall have regard to whether the holding of an inquest would serve the public interest, and without restricting the generality of the foregoing shall consider", amongst the things which I stated, the who, how, when, where and by what means, the additional ones, "the desirability of the public being fully informed of the circumstances of the deaths through an inquest and the likelihood that a jury and an inquest would make useful recommendations."

It may be that some procedural matter has come up that eliminates my concern and removes the clear statutory obligation of the coroner—not the chief coroner, the coroner for the particular area. I have great respect for the coroner system, I will fight forever to prevent it being abolished, even though there has been opinion expressed in some quarters that it serves no useful purpose; at least that appears to be the thought in some people's minds.

However, I cannot understand how I can be so wrong and the Solicitor General so right in the understanding of a statute of this province. I say that about the office, not about you, sir, because I can see you are about to agree with me in my interpretation.

Hon. G. W. Taylor: You are so disarming, Mr. Renwick.

Mr. Renwick: It is a serious problem today.

Hon. G. W. Taylor: Indeed; and with respect to your last comment, I for one have not heard of any request to disband the coroner system, nor would I ever contemplate it being done. As well as the situation you are talking about, there are many other situations where it serves an abundantly useful and beneficial purpose for the citizens of the province.

12:30 p.m.

On the particular matter you raised, there has not been a decision not to hold an inquest; the decision has been, as a result of the present inquiry and the ongoing police investigations,

not to hold an inquest at this time. I believe the statute allows at least that leeway. When one does not decide, that does not mean there is not going to be inquest, and there is no time frame within which an inquest has to commence, although one naturally believes, as you do, that the more recent the incident which is the subject of the inquest, the fresher the memories on the subject, as all of us who have practised testing memories of individuals in legal proceedings of a recall nature are well aware.

At present, however, all that has been stated on the example you have put forward, that of Sick Children's Hospital, is that at this particular time an inquest might be—and indeed I believe it would be—more detrimental than of assistance to the ongoing police investigations and the present inquiry being conducted by Mr. Justice Dubin.

No decision has been made not to hold an inquest. It is just that one is not being conducted at this time. Undoubtedly, the coroner will make a decision at some particular time as to whether or not to commence that inquest, if one is going to be commenced.

Mr. Renwick: I think it is a serious question. The history of the coroner's office, its statutory embodiment here, is the preservation of a distinct office which has very individualized responsibilities.

Within certain limits, one can accept that time flexibility is obviously of concern. In other words, there are certain provisions leading up to it; that is, the warrant for the possession of the body and all of those things. But the whole tenor of the statute is that the coroner is not deferring his obligations to somebody else, he is proceeding with his responsibilities and carrying them out with reasonable dispatch, that is the tenor of it. I do not believe it is a sufficient answer to the statute for the coroner to say, "I am awaiting a police investigation." Because he, sir, in conducting his investigations, has the power to call in aid, the police, to assist him.

This statute is a very carefully designed statute. It is self contained. It cannot be left to some haphazard operation. I intend no reflection on the chief coroner or his predecessor. It is a clear displacement of the statute, all done in good faith under some wrongly held theory that it is subservient to something called police investigation. Anyone who reads this statute—I know the chief coroner knows each and every item of it—simply says, "These are deaths which, to my simple mind, require investigation."

The coroner is obligated to conduct the investigation. He can call in aid, whosoever and whatsoever he needs to help him with that investigation, but he cannot, himself, avoid the statutory obligation imposed upon him without being subject to serious charges of dereliction of duty. I speak that forcibly, knowing that I can have the ground pulled out from under me by some particular version of it.

As I read the statute, and I have read it and reread at least 50 or 60 times since the Evans problem came up and now with respect to the circumstances of the deaths at the Hospital for Sick Children, it was quite clear that when charges were laid by the Metropolitan Toronto Police this was an effective stay without the minister's intervention.

But there are now no charges, and I think the overwhelming demand of the statute, the language of the statute, the voice of the statute, speaking as it does in clear and certain terms, requires a determination by a coroner as to whether an inquest is necessary, having regard to the very specific amendments that were introduced into the statute of not just the when, how, where, why, who and the means but also those additional requirements about the need for the public to know in the first place and, second, the consideration of whether a jury at a coroner's inquest would have some valuable recommendations to make. My answer to that as a lay person is simply yes on all counts.

Hon. G. W. Taylor: I do not know of any legal decision on it. Section 27(1), which you have referred to, says, "Where a person is charged with an offence under the Criminal Code (Canada) arising out of a death, an inquest touching the death shall be held only upon the direction of the minister and, when held, the person charged is not a compellable witness."

I think that certainly cuts both ways. One is where, yes, if an inquest has been commenced, it should not continue except under certain circumstances and primarily with ministerial approval. But one might also read that, although it is a debatable point you have raised, one can commence even if there is a possibility, and maybe a very clear possibility, that criminal charges will be laid and criminal proceedings will be commenced from the death. It does not say that, but in looking at the section—

Mr. Renwick: It does not say that.

Hon. G. W. Taylor: No, it does not say that. But in looking at the section, it would lead you to the contemplation that, with that section in

there, there will be situations where you might ask why indeed you should commence an inquest when you know very well that tomorrow criminal proceedings or charges will obviously flow from it and that holding an inquest possibly could be detrimental in some way to the accused or to the police investigation and might greatly prejudice the final proceedings flowing out of the Criminal Code.

I think one has to read that section both ways. There are clear words to the effect that the Solicitor General can stop an inquest if one is commenced, but I think there are also cautionary words not to commence an inquest where there is a possibility of its being stopped and the potential for harm resulting from an inquest.

Mr. Renwick: Sir, I do not want to pursue it at any length. I do not accept the response you made. The statute, as I said, is carefully crafted to protect the rights of persons in any number of ways, and I cannot get away from the fact that section 9 in the 1972 statute, whatever it is in the consolidation, states:

"Every person who has reason to believe that a deceased person died (a) as a result of (i) violence, (ii) misadventure, (iii) negligence, (iv) misconduct or (v) malpractice; (b) by unfair means;"—(c) deals with pregnancy—" (d) suddenly and unexpectedly; (e) from disease or sickness for which he was not treated," etc.; "(f) from any cause other than disease; or (g) under such circumstances as may require an investigation, shall immediately notify a coroner or a police officer of the facts and circumstances relating to the death, and where a police officer is notified he shall in turn immediately notify the coroner of such facts and circumstances."

12:40 p.m.

I do not believe the statute has been complied with in its very precise and clear terms, and there is nothing I know of that indicates it has been done, from anything that has been disclosed in the extensive coverage in the press and by the extensive comments made during the course of the press coverage after the discharge of the charges that had been laid by the coroner for the city of Toronto, whose name happens to escape me at the moment.

It seems to me that this statute has got to be given the status it deserves, and it is one of the few matters on which I continue to feel deeply and strongly. Again, I am not asking you to comment; I would appreciate it if you would take it under advisement. If necessary, move the chief coroner out into independent offices to

impress upon him that, come hell or high water, when the game is on, the individual coroner and only the individual coroner can discharge that responsibility. He must make up his mind; nobody else can make it up. He has got to get about the business he is charged with, and he cannot take into consideration matters that are not specifically stated under the statute.

You will excuse my impassioned remarks, but I feel deeply about this. I will still say that there is a dereliction of duty until a statement comes from the coroner responsible for this area of the city of Toronto in those matters, until by chapter and verse the particular coroner states why there is now no inquest being held. Once he has convened the inquest, how he deals with it is entirely within his authority, just as the whole of the instances involved with calling the inquest are his responsibility.

I am not asking to interfere with how he does it; I leave that to the process in which he is involved and the people who are interested in the judicial process: the specific provision for the notification to go to the crown attorney, the specific provision for the coroner to have the advice and assistance of a crown attorney. But somehow or other, as a matter of administrative technique in the Ministry of the Solicitor General, simply to set this whole question aside as of no import seems to me to be a serious fault.

The Vice-Chairman: Did you have any reply to—

Hon. G. W. Taylor: No. Mr. Renwick was not asking for replies.

The Vice-Chairman: He asked you to take it under advisement.

Hon. G. W. Taylor: Right.

Mr. Spensieri: Mr. Chairman, this might be an appropriate time to raise a point that was just touched on during the Solicitor General's remarks. It is connected with the question of wrongful death occasioned by the use of nonmedically prescribed drugs and the whole question of how it is perceived that many of the deaths occurring from motor vehicle mishaps relate to impairment and yet there are no precise statistics on the percentage of those accidents resulting from impairment caused by the use or habitual use of narcotic drugs.

We saw from the Solicitor General the small, almost insignificant funding that has been given to this issue: I believe he mentioned about \$116,000. I just wonder whether the Solicitor General or his staff would like to comment on the feasibility of an expanded role for the

coroner's office in these deaths resulting from impairment to see to what extent they relate to the use of narcotics or nonmedically prescribed drugs, to see whether some statistical analysis can be done so that the Solicitor General might be instrumental in devising regulations or guidelines on the licensing, for instance, of drivers in cases of those people who are habitual users and, therefore, are causing the carnage we have been exposed to.

I just wonder whether there is a facility within the coroner's office or whether there should be a totally different body. I wonder what general comments the Solicitor General may have on that thorny question.

Hon. G. W. Taylor: Mr. Chairman, we have with us the coroner, who is part of the study that is being commenced, and Mr. Lucas, who is also part of that study, which touches on the comments the member has made. Maybe they could explain far better than I the past history of material that is available and what they intend to produce with the study that has been funded just recently. Dr. Bennett and Mr. Lucas are here to answer that for you.

Dr. Bennett: As you are aware, Mr. Chairman, about three years ago we conducted a study with the same groups with which we are conducting the present study, the Traffic Injury Research Foundation and the Centre of Forensic Sciences, to determine just exactly what the member is asking. Out of that came certain results that led us to this second study. They showed that alcohol is still number one by far and cannabis is number two. The other drugs paled into insignificance throughout the number of tests that were done that year, which amounted to about 400.

As a result of that, we decided to carry out a second study drawing strictly on alcohol and cannabis and trying to find out, as we did not truly before, what effect these substances had on the actual accidents, how they contributed to them. That is what we are looking into now, whereas before it was just whether they were present or not. We did a sort of subjective study on whether it contributed, but it would be meaningless. The present one is much more in-depth and should provide some of the answers for these two drugs.

Mr. Spensieri: As a matter of practice now, are all motor-vehicle-related deaths in which there is even a suspicion of use of a nonmedically prescribed drug automatically and by that very fact investigated or an inquest conducted?

Dr. Bennett: They are medically investigated, yes. Almost 100 per cent are given autopsies. If there is any suspicion of drug use, a drug screen is requested by the Centre of Forensic Sciences. Apart from that, the other two drugs, alcohol and cannabis, are automatically tested for in every driver and pedestrian fatality.

Mr. Spensieri: I presume that your findings are then being co-ordinated with the appropriate ministries, such as the Ministry of Transportation and Communications when it comes to licensing, so they can perhaps develop guidelines on whether extraordinary licensing restrictions ought to be placed on certain categories of people: let us say those who have had many criminal convictions for the possession or abuse of narcotic drugs.

Is there any kind of correlation going on, not only within the ministry but also with the federal authorities, where these drugs are controlled by the criminal law? I guess the problem will become more acute if we move towards decriminalization. I just wonder whether this whole thing is being looked at in a concerted way.

Dr. Bennett: We have a relationship with the Ministry of Transportation and Communications to supply certain information to assist us in evaluating these fatalities. What you are asking, I think, will come later on once the results are available to determine what possibly can be done to restrict licences or whatever.

Mr. Spensieri: One last supplementary: When you do conduct an inquest or an autopsy as a result of a death, do you automatically inquire into the criminal record of the person involved to see whether there is any correlation between previous convictions and the present fatality?

Dr. Bennett: The police do; we do not.

Mr. Spensieri: And that would be communicated to you?

Dr. Bennett: Not necessarily. It is not really of interest to us specifically. It is of more interest to the police whether there has been a previous record. For the purposes of the inquest, we cannot name or blame, determine responsibility, etc.; so it would not necessarily come up. At times it does, but not necessarily.

Mr. Lucas: I cannot add anything to that, Mr. Chairman.

The Vice-Chairman: Does that conclude the

discussion and comments with respect to vote 1702, item 4?

Item 4 agreed to.

12:50 p.m.

On item 5, forensic pathology:

Mr. Chairman: Are there any comments?

Mr. Renwick: Again, my comments are simply to compliment Mr. Lucas and, through him, whoever was involved in what the newspapers describe as the immense work in connection with the deaths at the Hospital for Sick Children. I think that should not go unremarked by this assembly.

Not only do I gather that the investigation was extremely difficult, but also I understand that the people involved in it worked long hours in very difficult circumstances to try to meet the legitimate requests of the crown. On behalf of all the members, I would like to extend our appreciation for that kind of dedication.

Hon. G. W. Taylor: Yes; I think those words are well spoken, Mr. Renwick. As you and your colleagues know very well, the tests that were developed were unique and were developed after long and extensive study. I think a great accolade should go to the people involved in developing those. I think it speaks excellently of the education and dedication of the coroner's staff.

Mr. Renwick: I wish you would express the appreciation of this committee to them so that it will not go by unnoticed.

Mr. Vice-Chairman: We will let the record show that Mr. Renwick's remarks have been endorsed wholeheartedly by the committee.

Item 5 agreed to.

Vote 1702 agreed to.

On vote 1703, policing services program:

Mr. Mitchell: Mr. Chairman, in view of the clock, I do not know whether this is an appropriate time to start a new vote. I seek the chairman's guidance as to whether it would be an appropriate time to break.

Mr. Vice-Chairman: What is the wish of the committee?

Mr. Brandt: I agree with that, Mr. Chairman. I think it is appropriate that we do so. There are some items that I want to get into on this vote.

Mr. Vice-Chairman: I noticed that "Brandt" and "Renwick" were very prominently noted and underlined here in connection with items in the vote. Is it the pleasure of the committee that we adjourn?

Hon. G. W. Taylor: Vote 1703 covers the Ontario Police Commission, the Ontario Police College, the Ontario Police Arbitration Commission, the hearings under the Police Act.

"Policing services program" is the general heading of vote 1703, Mr. Renwick. I believe you had comments on the police commission, and I know Mr. Brandt wanted to develop something on the police commissions and, being a former police commissioner, he has all kinds of authority and background information.

Mr. Renwick: How much time is left?

Mr. Vice-Chairman: There are approximately two hours left, Mr. Renwick.

Hon. G. W. Taylor: What plans do you have for sitting, Mr. Chairman?

Mr. Renwick: We are sitting next Wednesday morning. That is what I think the committee had decided.

Mr. Vice-Chairman: I thought that next Wednesday morning we would conclude these estimates and that there would be time to consider the city of Windsor bill—if we got in touch with them.

Mr. Brandt: What would the schedule be, then? From 10 to 12 for estimates, and the city of Windsor bill to follow?

Mr. Vice-Chairman: That would be it, approximately, yes.

Mr. McLean: It hardly seems worth while to bring the city of Windsor in for one hour on a Wednesday. It is going to take more than an hour to deal with that item. I would rather spend the full length of a sitting. It is a long way to come for just an hour, and there may not be an hour.

Mr. Renwick: I guess we are in the hands of the clerk, Mr. Chairman. The understanding was that they simply wanted us to proceed with that first clause of the bill and drop the other, or to defer the bill. So it is my understanding that in

either situation there was no need for anybody from Windsor to come as long as we had the information.

The Vice-Chairman: Then we stand adjourned until Wednesday—

Mr. Chairman: Excuse me. Before you adjourn, may I take the chair?

The Vice-Chairman: Certainly you can take the chair.

Mr. Chairman: Thank you. I am sorry; as a matter of courtesy, I was speaking with the standing committee on general government on a matter.

Perhaps the clerk has advised you that it is likely we are going to have Bill 62 referred to us. You have referred to that, Mr. Clerk?

Clerk of the Committee: No, I have not referred to it.

Mr. Chairman: The Municipal Boundary Negotiations Act bill is likely to be referred to us for Tuesday only.

I also am advised it is likely that we are going to have Bill 11 in the second and third weeks of July in front of this committee. That is what I am able to glean so far. These are likely. I will be able to ascertain this from the House this afternoon.

Mr. Brandt: Which bill is that?

Mr. Chairman: Bill 11 is the Municipal Licensing Act.

Mr. Renwick: You will have to do it without me.

Mr. Chairman: I am sorry to interrupt. I hope I have not overlapped with anything Mr. MacQuarrie did.

We are adjourning until the House advises us that we sit on Tuesday or on Wednesday morning at 10 o'clock.

The committee adjourned at 12:57 p.m.

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No. J-10

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice

Estimates, Ministry of the Solicitor General



Second Session, Thirty-Second Parliament

Wednesday, July 7, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, July 7, 1982

The committee met at 10:10 a.m. in room 228.

ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

(concluded)

On vote 1703, supervision of police forces program; item 1, Ontario Police Commission:

Mr. Chairman: There are not only seven present but a member for each party. Shall the estimates of the Solicitor General recommence at 10:10 a.m.? We have two hours and 11 minutes left and we adjourned at vote 1703, item 1.

I cannot tell you what we were in the midst of when we last dealt with the vote. Can somebody assist me? Vote 1703, item 1.

I have in my record that Mr. Brandt and Mr. Renwick each wished to speak on the local police commissions. Mr. Brandt also wished to discuss police vehicles and discharging police, i.e., firing police. I think we agreed that those three topics fitted under item 1, Ontario Police Commission.

Mr. Philip: Unfortunately, Mr. Renwick has been sick for the last three days and Mr. Swart is in the Planning Act committee because of his particular expertise in that area, so I do not think Mr. Renwick will be here to ask those questions.

Mr. Chairman: Fine, thank you, we will leave it to Mr. Brandt to ask the same questions as Mr. Renwick had.

Mr. Philip: I am sure he will do an admirable job.

Mr. Brandt: I would like to start off by making some comments and perhaps raising some questions respecting the makeup of police commissions.

As the Solicitor General (Mr. G. W. Taylor) is aware, most commissions in Ontario are at the moment three-person commissions. My council in Sarnia has argued that it would like to have the police commission increased from three to five persons; I believe the Solicitor General has had correspondence to that effect from that particular commission.

I have disagreed with the Sarnia council's suggestion that in the five-person makeup of the

commission, an increase of two, the majority be elected people. In other words, three elected and two appointed. I have rather vigorously and vehemently fought against that kind of a combination. However, I personally agree that increasing to five, with three appointed and two elected people, is a more appropriate number for a police commission to operate at than the present number of three.

I would like to suggest to the justice committee members that I think the strongest argument put forward for increasing the commission by two is the very serious quorum problem when you have only a three-person commission. If only one person is missing, it makes it rather awkward, and at times difficult, even to move and second motions.

In addition, if you have any controversy or any kind of difficulty in getting agreement between the two people who happen to be on the commission with a third missing, quite obviously you have a standoff situation where no business whatever can be done.

Because of the makeup of a commission and the rules they operate under, in the case of a mayor's absence for example, it is unclear, and perhaps the Solicitor General would want to comment on this, whether or not another member of council can be appointed as the acting mayor to serve on the commission. My understanding is that he cannot. The only person who can be appointed is the mayor himself or herself; you cannot appoint another member of council, even in an acting capacity, to fulfil that role.

Those being some concerns and problems, Mr. Minister, I strongly urge your ministry to look very carefully at least at permissive legislation that would allow an increase to five people. Those five people should be three appointed and two elected, as I have suggested, in much the same way as we have a majority of appointed people now on a two-to-one basis, with one person being elected.

Perhaps you want to respond to the argument I would like to put forward. I believe there is a great deal of validity in increasing the complement on a local police commission.

Mr. MacQuarrie: Speaking to the same mat-

ter, having had some years of service, as has Andy, on police commissions, I have no objection to permissive legislation being introduced which would give the local authority permission to expand to five members. However, in my experience, I have found the three-member commission has functioned extremely well.

There are the theoretical problems of quorums and standoffs and the rest of it, but in the light of my experience, these problems just have not arisen. On the recommendation that some municipalities have come forward with of having the majority of the commission composed of elected representatives, I agree with Andy and feel this would be a bad move.

The basis on which the police commission I was most familiar with always operated is you keep it as far away as possible from the day to day hurly-burly of local politics and local political pressures. I think this is one of the reasons why police commissions in Ontario have functioned so well.

There is some merit in the suggestion of giving the local authorities some elasticity if they want to expand membership for one reason or another, but for the love of heaven, keep the majority on the board appointed.

Mr. Brandt: How does the Solicitor General wish to handle this?

Hon. G. W. Taylor: Do you have the floor now, and do you want to end that question?

Mr. Brandt: It depends on what kind of a format you wanted to follow. If you want to respond to that one, I can go on to my next question.

Mr. Chairman: Mr. Brandt, you are the only one who has expressed any interest in any questions from here on, so on the face of it, unless others have supplementaries—Mr. Philip asked for a time frame to try to organize this through to the end.

Mr. Brandt has asked for three matters under vote 1705, item 2 and three matters under vote 1703, item 1. No one else expressed any interest in addressing any questions, so I assume Mr. Brandt has the floor for two hours and 10 minutes, unless he grants supplementaries to other people.

Hon. G. W. Taylor: Heaven forbid he should get the floor for two hours and 10 minutes, but I welcome Mr. Brandt's suggestions and the suggestion Mr. MacQuarrie emphasized.

Mr. Brandt suggested the commissions be independent of local municipal councils. I support that position, although the Police Act is at

present under review and there could very logically be an increase in the size of the commissions where possibly the population of the community warranted a larger commission.

That is not always necessarily the most important criterion. If you have very industrious, hard-working, dedicated appointees to the commission, three could probably work just as well as five, although I do recognize that from time to time quorums, holidays, vacations, all of those things may play havoc with the workings of a commission.

Mr. MacQuarrie: Hot air is a problem with a number of participants.

Hon. G. W. Taylor: That may be so true, Mr. MacQuarrie.

I think overall when we will be looking at the legislation we will be considering the possibly permissive—and that is one route, but the other one may be making it mandatory related to population.

You can devise many formulas. I think the most important one, that historically has been shown right from the outset of policing in Ontario and is why the independence of commissions was derived, is to allow the independence of policing, free from contamination and interference, or even the appearance of such, even if it is not taking place, by local municipal politics.

10:20 a.m.

I understand their concern when they say, "We have to raise the money and we do not have much say in that." They do have a say; they are represented by the senior elected official of each municipality. Most commission proceedings are open to other members and many are open to the public, so there is a scrutiny of what they do except on specific personnel matters, which is understandable.

Overall, I think the independence of policing is a necessary function. Historically, when elected people have interfered with the day to day operation of municipalities, we have seen that independence shattered.

One can say, "Yes, Mr. Taylor, you are the Solicitor General and you make appointments," but I think when the Lieutenant Governor in Council makes appointments, they are independent. Very good people are sought and recommended and those people change from time to time. With the new cabinet directives of a number of years of service on agencies, boards and commissions, you get an influx of new people and new ideas. They are not interfered

with by the political process, if one thinks that the political process can be used to interfere in a less than satisfactory method.

I think, Mr. Brandt and Mr. MacQuarrie, that if there is any increase in size, I would lean towards having the majority appointed, not elected, to give that independence to the police force. Not that they are totally independent; they do report to the commission. But the commission is independent of those electoral influences that may prey upon an elected individual's mind come election time and that person might, for example, do something to reduce budgets, reduce manpower, when that might not be the best solution for the community but might be very attractive to secure votes. I think that concerns and worries the Solicitor General and many other people who have their knowledge and background in policing.

Mr. Brandt: As a supplementary, Mr. Chairman: The Solicitor General indicated that he might lean towards—I do not believe you said permissive legislation—five as an appropriate number in some permissive way and if that were the case, three of those would continue to be appointed and two elected.

Could you give us any indication whether or not such a change might be forthcoming in the reasonable future, any time frame? Is it under consideration, is it something that we can leave with you? What is your feeling with respect to that particular matter?

Hon. G. W. Taylor: I do not know when exactly the Police Act will be completed, possibly some time in the fall, when it has gone through the internal processes of being amended. It is being discussed by the association of police commissions, government bodies and the Association of Municipalities of Ontario. When it is put together—I suspect by the fall or early spring—it will be out to the general public for discussion.

You mentioned elected people. I think what would be more likely considered is at least the mayor and maybe one other councillor, but they would be not elected to the commission. I am sure that was not what you were suggesting at all.

Mr. Brandt: No, that is not what I was saying at all.

Hon. G. W. Taylor: The majority would still be appointed by the Solicitor General. That is the best time frame I can give you—fall, some time in spring.

Mr. Brandt: All right. Another matter I wanted to bring up is one that appears to be growing in complexity and in difficulty with the passing of time.

There is a great strength in any organization of the police associations today and in many instances they come to the aid and assistance of officers confronted with some difficulty before commissions. I note with some concern that police commissions are having a great deal of difficulty in reprimanding officers in some instances because the decisions of commissions are being challenged.

They are having difficulty in suspending officers, without getting into specific cases, where a judgement on the part of the commission would, in an appropriate circumstance, lead one to believe a particular officer should be suspended or dismissed.

I have an increasing concern about the fact some officers may even be dangerous. There are allegations of brutality in some instances where the officer in question should really be considered for some other line of work. The commission has a great deal of difficulty in dealing with those kinds of circumstances.

I do not know what the Solicitor General's office could do about it. I have noted a number of instances of this type where, because of the strength of the associations that come to the aid of these kinds of officers—who on occasion are an embarrassment to their own force—in many instances the commissions themselves are having great difficulty in any kind of disciplinary action that might be considered.

I wonder if the Solicitor General has any comments to make, or whether he sees this as a concern on a province-wide basis, or whether or not this is a matter that commissions are discussing on a continuing basis with your office.

Hon. G. W. Taylor: Mr. Brandt, this is a problem in certain individual instances, but I do not see it as a province-wide problem. According to the chairman of the Ontario Police Commission, Shaun MacGrath, there are certain instances.

There have been representations, as you have mentioned, by police associations when the Police Act has been under review to make certain changes, and by the police governing authorities, associations of police chiefs, etc., and municipalities as to what they would like to see in the amendments to the Police Act.

One of the biggest concerns on the chiefs' side is they cannot change decisions that are given out in discipline matters which, in their opinion,

are not heavy enough. The disciplinary proceedings could be of a light nature, or not befitting the action taken by the individual officer, and they may feel something of a heavier nature should have been levied on that individual officer.

That would summarize the general concern on the police management side, as it is referred to. On the association side, I guess they would not want that to be increased.

One other area which was before the procedural affairs committee was that in a lot of situations the OPC directives are only that. They do not have sufficient power within the OPC when they make certain recommendations to different forces as to how to conduct themselves or how better to improve their services. They are only recommendations and they do not have the sanctions. Those items would be considered in amending the Police Act.

10:30 a.m.

I might ask the chairman of the police commission if he would comment in regard to your questions on how he sees the Ontario Police Commission operating and give you some detail of the situations other than those specific ones that are ongoing before tribunals so we do not get into any difficulty that way. Mr. MacGrath, you might comment on Mr. Brandt's questions.

Mr. MacGrath: I understand your concern, sir. Invariably, when a disciplinary matter is appealed at the local level to the chief, the association will provide legal counsel to the appellant. Invariably, the local chief does not have legal counsel on his side and neither does the board—in the larger boards, yes. The associations are very willing and very capable of providing legal counsel for all of our appeals. In some of them we hear, the local board is not represented by counsel.

Mr. Brandt: At some time—and I do not know if you have these figures necessarily at your disposal at the moment—I would like the Solicitor General to take a look at the increase in police commission budgets right across the province as they relate to legal defences that have had to be mustered by a commission against an association in situations such as I am describing here. I have kept my comments general for very obvious reasons. I do not want to cite a specific case, but I could well do that on a confidential basis with you, sir, if you would like to hear some.

Many police commission budgets have expanded by multiples in the last few years as a

result of these kinds of legal battles. It appears to be almost a way of life today that the associations and commissions are getting into these kinds of legal entanglements as a result of the attitude, as it were, of associations in defence of a particular officer. I do not know if there is anything specifically that can be done about it other than it is a matter of increasing concern.

I find there are very few commissions, from some of the representatives to whom I have spoken, that are able to set aside a sufficient amount of money in their legal account in a line by line budget to cover the kinds of legal debts they are incurring over the course of a year. They are increasing at such a rapid rate that if they put, to use a number, \$50,000 or \$100,000 into their budget for that purpose, they find out at the end of the year they have undershot their estimates by a very substantial margin.

With that kind of an increase in pressure coming from the associations against commissions which are making decisions of a disciplinary type, I think it is a matter which should be viewed with some concern and it should be monitored carefully by the Solicitor General's office. There appears to be no abatement whatever in terms of this kind of thing slowing down. It appears to be increasing on a regular annual basis.

There is a lot of the taxpayers' money going into this particular part of the budget that really is nonproductive in many respects. If you look at a hard-pressed commission budget where many commissions are holding off, for example, the purchase of equipment, vehicles and different essential purchases that the commission requires for the force, this seems like an expenditure that should be avoided, if there was a way to avoid it.

Mr. MacQuarrie: To follow on what Mr. Brandt has said, I would like broken out from the individual commission's legal expenses that portion that relates to matters between the commission and the association. A lot of commissions have a lot of other legal expenses in other areas.

Hon. G. W. Taylor: It can be broken out. I do not know if we could get it down to the refinement you want, Mr. Brandt, by breaking it out. Some of them may be insignificant items, some may be arbitration items or disputes on an existing agreements.

Others may be of a larger nature, where in effect someone has been dismissed and it is a wrongful dismissal, then the larger court actions

are usually commenced with the consequent legal fees in that regard. I guess it is not only within the police area, except they become more celebrated.

Even in the general litigation area, there is an increase in litigation in regard to wrongful dismissal or that kind of action today, as well as areas of litigation which get you into the human rights area and Human Rights Code situation. It is hard, and one would not want to, to remove those as a result of any amendments to the Police Act.

In other areas you have wrongful dismissal actions; in common law today you have the benefits of the Human Rights Code of which this government and the Legislature have been very supportive.

I feel very reluctant to offer any methods or even put on any methods of refusing that style of action. It is a concern because the costs mount up, as they do in any litigious matter and one does not share the pleasure of paying those costs when you are a taxpayer. You say it could have been resolved some other way, but that is not always available to you, so you just have to bear those excessive costs.

Mr. MacGrath has just given me a note that there have been 13 appeals to the Ontario Police Commission on discipline matters. Possibly you might explain the length of time of those, Mr. MacGrath, just to give some indication and the force they come from. I do not think they are restricted to small community forces or large community forces. They are just discipline matters.

Mr. MacGrath: So far this year we have heard 13 appeals and that includes two from the crown force, the Ontario Provincial Police. Last year the total heard was 21. They vary from the large forces to the smaller forces. The average hearing is four hours; there was one that went on for a day, but the average hearing is four hours. I am going from memory now.

Every appellant was accompanied by legal counsel. In a few instances, we had no legal counsel representing the board of police commissioners, or the committee of council, as the case was in a couple of instances.

Mr. Brandt: It is a matter that should be monitored only, I suppose, from the standpoint of being very cautious about what the future might hold in terms of a police commission's actions; making them well aware of the nuances of how they can operate and what they can do with respect to disciplinary actions. If they are

aware of them, they may well be able to avoid some of these legal entanglements.

It is an ongoing educational process that perhaps Mr. MacGrath's office could be aware of in terms of continuing to keep information flowing to commissions. In many instances, I have seen situations where a commission, because of a technicality perhaps, has operated inappropriately and found itself in a very complicated situation which costs many thousands of dollars to get out of.

One of the ways in which your ministry might be able to assist would be through a continuing flow of information to commissions about this kind of problem. It is an ongoing problem that has to be addressed and dealt with in the future. I raise it just so you will be aware of it and I am sure you are.

Hon. G. W. Taylor: We are aware of it, Mr. Brandt. If you go back to municipal council days, as I do, I always wondered how to operate. You were thrown in, elected, and nothing came to you, possibly, from the provincial government. We do have a process now where each appointed individual receives an educational kit, if one wants to describe it as that, from the Ontario Police Commission. It contains some guidelines and the statutes that govern the police commission.

I recognize it is not the most elaborate piece of documentation to assist the individual, but it is something. If I call on Mr. MacGrath, he will explain to you the kit and its content and what will hopefully be improved upon.

10:40 a.m.

I recognize your concern and that of a new individual who gets appointed to a police commission, sitting there saying, "Just what to do we do?" So I will let Shaun MacGrath explain to you what assistance a new appointee gets to perform the functions of a commissioner.

Mr. MacGrath: Less than 18 months ago we published this set of guidelines for police governing authorities. It covers the gamut of their duties and obligations, both those on boards of police commissioners and committees of council.

As an adjunct to this, the governing authorities themselves, four months ago, wanted to publish a more elaborate version. We printed it for them at the Ontario Police College. It is a 200-page document. This is approximately 40 pages itself. It just contains the bare bones of guidelines.

With respect to disciplinary matters heard by

or disposed of by the Ontario Police Commission, we also publish a bimonthly newsletter, which we commenced about 18 months or two years ago. We started out sending it off solely to the chiefs of police. It is a very simple four-, eight- or 12-page newsletter. We have now expanded the circulation of it so it includes all senior officers of superintendent rank and upwards, all members of governing authorities, be they those of police commissioners or committees of council, and the president and secretary of each police association in Ontario.

It strictly contains information from the commission to all three segments of policing. It is not a social newsletter in any shape or form. It contains hard, factual information: decisions from other jurisdictions in Canada and news of policing training. We hope to increase its frequency to once a month. Mailing and printing are costly, but we are finding it to be one of the best communication tools we have and it is getting us actual contact with all three levels of policing.

Mr. Brandt: I had a third question that dealt with police vehicles. I would like simply to lay that question aside for the moment, since I have had the answers on an informal basis with some of the representatives from the Solicitor General's ministry. I do have another question with regard to the Ontario Police Commission itself that I believe comes under this particular vote.

My understanding is that, at the moment, the Ontario Police Commission is made up of one full-time commissioner—yourself, Mr. MacGrath, is that right?

Mr. MacGrath: Yes.

Mr. Brandt: And two part-time? From my discussions with police officials in the province, and I have talked to quite a number of them, I learn that Mr. MacGrath is very highly thought of and well respected among police officials right across the province. That goes without saying and I congratulate him for earning that kind of respect among his colleagues. I do not expect you to buy me a coffee or anything, having said that, sir; I just wanted you to know that is the kind of comment that is being made about you.

Mr. Mitchell: It was not coffee he was talking about, by the way.

Mr. Brandt: With the makeup of one full-time and two part-time members of the commission, and going back to my earlier comments about the increasing complexity of policing and the kind of problems we are running into, legal and

otherwise, with respect to police departments, I wonder whether, in this day and age, one full-time Ontario police commissioner and two part-time ones is an adequate and appropriate number.

I have heard it suggested there should be more full-time commissioners. The number of five has come up again. The suggestion is made that Mr. MacGrath is doing an excellent job, but he is extremely hard pressed because of the responsibilities of his office and the kind of pressures he has to face on a day to day basis.

So the argument has been made to me, I think with some validity, that we should be looking at an expansion of the Ontario Police Commission and to more full-time commissioners. I do not know whether Mr. MacGrath or yourself would like to respond to that.

I realize there is a cost involved, but I do believe some consideration should be given to that kind of an adjustment. Perhaps you would like to comment on it.

Mr. Chairman: Were you going to also mention you happen to have a couple of unemployed brothers-in-law?

Mr. Brandt: No, I have no one specifically in mind for the position.

Mr. Philip: He was applying to the liquor control board, which falls under a different ministry.

Mr. Brandt: Mr. Minister, Ed, do not worry. After the next election I will look after you.

Interjection.

Mr. Philip: I doubt whether I will have to look for a job. Look to your left. Your two Tory colleagues sitting beside you will need help.

Mr. Brandt: I never look to the left, Ed, always to the right.

Hon. G. W. Taylor: I am near the end of the term. I thought maybe Mr. Brandt wanted to apply for the job himself. He painted Mr. MacGrath in such glowing terms, which I totally agree with, that either he is going to ask for a raise or the full complement of nine assistants the legislation allows for.

As you are probably aware, Mr. Brandt, last session we increased to nine the potential maximum number of individuals on the Ontario Police Commission. In the procedural affairs report which studied the OPC they also recommended there should be more than the present existing one full-time and two part-time members, all of whom give excellent service to the provincial government.

As I stated in my opening remarks, we will very shortly be appointing a full-time vice-chairman of the OPC. We are at present looking at some more part-time individuals. When we start looking at part-time individuals we look to people who can fill a particular capacity. Rather than generalists, we are looking for some individuals who can fulfil specific functions to assist the chairman on a part-time basis.

To give you an example, someone may be able to do professional assessments of individuals, say for promotion or initial employment as officers. If you could get someone with that style of background, using that example, you could then assist many of the police forces that do not have this particular ability within their force.

We have many forces that could not employ, for example, a full-time psychologist to prepare material to assess individuals who are coming on the force. The larger forces have that experience and ability, but some of the smaller forces do not. So, as an assistance to those smaller forces, to continue the example, Mr. MacGrath may get one part-time member that could do that, and supply some backup information to some of those smaller forces.

So that is the route. Yes, we are going to be looking for individuals to increase the size of the commission. Very shortly, as I stated in the opening statement of the estimates, we will make an appointment for vice-chairman of the OPC.

I think you are quite accurate. I get the same reports that Mr. MacGrath is doing an admirable job throughout the province. If I can give him an accolade publicly here, I would be pleased to do that.

Since you are an expert on these reports, do you know what they are saying about me?

10:50 a.m.

Mr. Brandt: Nothing much at the moment.

Hon. G. W. Taylor: I just thought since you are an expert you might want to enlighten me. Do it privately if it is going to hurt my feelings.

Mr. Brandt: Actually, they have been referring to you as "the new guy." They are waiting to make a complete assessment at some later date, but I will make a point of passing on to you any remarks I hear as quickly as I get them. It will be the unvarnished truth, I can assure you, whatever it is.

Hon. G. W. Taylor: I do not want to get you overburdened with too many reports.

Mr. Chairman: Having no other members wishing to speak on vote 1703, I have Mr. Philip and—

Mr. Philip: I wished to speak to vote 1703, item 1.

Mr. Chairman: I understood you wanted to talk about special—

Mr. Philip: I wanted to talk about a number of items. The investigations with police-related problems, the police commission and criminal intelligence would all fall under this.

Mr. Chairman: They would not fall under Ontario Provincial Police?

Mr. Philip: Ontario Police Commission, vote 1703, item 1.

Mr. Chairman: I think, then, Mr. Spensieri and you are— He believes, as I would, that special services and so on would be under the OPP, vote 1705, item 1.

Mr. Spensieri: Perhaps the matter could be taken care of by supplementaries if necessary.

Mr. Philip: Before raising some of the issues I was concerned about, I spoke privately with Mr. Spensieri. Some of the concerns I have are shared by him because of the nature of our ridings and the kind of people we are serving. I hope, with the committee's indulgence, we can have a fairly free-wheeling conversation and dialogue on it. Mr. Spensieri can interrupt me and add supplementaries and join in on it whenever he so chooses.

Before I do that, this is the first opportunity I have had in this committee dealing with these estimates to congratulate the minister on his appointment and to congratulate the government on separating the two ministries of Solicitor General and Attorney General, in which Mrs. Campbell of the Liberal Party and our party have been implicated. I congratulate you on your appointment as minister.

Dr. Cotnam, who I think is a really very dedicated, hard-working public servant, is not with us during these estimates. I hope I might at least express my appreciation to him for any assistance he has given me in my job over the years. Any information I ever wanted was open to me and I think he has done a tremendous job. He is a hard act to follow and I think those sentiments should be made publicly.

I would like to deal with the area of criminal intelligence. I am running into a number of cases in which we are not quite sure whether it is people pretending to be of the underworld or people who are in fact of the underworld who

are putting pressure on businessmen who either live in my riding and have businesses elsewhere in the Woodbridge area, or are operating businesses in my riding.

I have shared my concerns with the Ontario Provincial Police, particularly about one case. The scenario was as follows: this particular chap bought an industrial condominium with a stated, signed agreement that no one would operate the same kind of business in the same condominium, and that it would not be sold for the same purposes.

Then he underwent a series of pressures—innuendo about how nice his family looked, what a nice little boy he had, and a series of harassments by getting sheriffs to lock up the premises when he was the owner and had paid his mortgage rates. In the end, he caved in and put a waiver in the purchase agreement that allowed someone else to operate, in this case a service station, in this particular complex in Woodbridge.

One of my concerns is this: when I called the Ontario Provincial Police they were very co-operative; there was a gentleman there—I will not mention his name—who seemed to understand the community he was dealing with and who spent a lot of time on the case. Originally he called the Woodbridge police and they gave him answers which I thought—I would question the way they approached it.

I would have thought the first thing they would have done would be to seek help from the intelligence services of the OPP or the police commission, and have someone who was qualified to deal with this kind of coercive underworld stuff. Instead, they said: "Well, there is not an awful lot we can do unless there is an action committed against you. If a bomb really does go off, then we can come."

My first question is this. What kind of communication is there between the OPP and the local police forces to alert them when there is this kind of suspicion? It should be plugged into the provincial body and people who are trained and capable of dealing with that kind of underworld activity should be handling it, rather than the local police force who are more used to breaking up brawls on a Saturday night and dealing with family disputes and other more traditional forms of police work.

Hon. G. W. Taylor: They have a full, comprehensive police force in Metropolitan Toronto.

Mr. Philip: This was in Woodbridge.

Hon. G. W. Taylor: That is the York Regional

Police, but all of the police forces transfer information back and forth among the York region and the OPP and indeed the Royal Canadian Mounted Police. They work in co-operation. The larger forces naturally have specialized units for the type of matter you are discussing, rather than the phrase you use, for the brawl situation.

They usually have intelligence units; the OPP do as well as Metro forces. I do not know whether York has a special intelligence unit too; they are a larger force. Given the facts you have mentioned, the forces are aware it is going on to some extent.

When you commence an investigation of that nature you have to have some good solid evidence and background. Even when you start continuing the next phase, of whom would we ask questions? If you had the intelligence unit, would you go out and start asking questions of this?

With nothing more than that piece of information you have given me—and it may be more—I am sure you would not want it to be any other way. Given that particular situation, would you want an investigating officer paying calls to the individuals asking questions as to their activity when they are not sure? I do not know.

I will get Deputy Commissioner Lidstone to express what he might think of the facts you have given. I just get slightly concerned about how soon you commence investigations. In some peoples' eyes it might be police harassment or interference when they might be in effect saying, "Oh, that did not happen at all; it is close to a business contract and the conversation got a little more heated." I do not know.

11 a.m.

I am trying to rationalize your comments in the way a police force might take action on such a matter. But I will bow to my experts and ask Deputy Commissioner Lidstone, given the situation that Mr. Philip has mentioned, that someone has bought a condominium with a particular business aspect about it, someone else is trying to open up another condominium doing much the same business, and then there is a veiled threat—would that be a fair enough comment?—that you have nice children and something might happen to them.

Mr. Philip: There would be a series of these things. Never anything enough to lay a charge of coercion, I guess. Eventually he caved in.

Hon. G. W. Taylor: How would you approach

an investigation of that nature in police procedures?

Deputy Commissioner Lidstone: An interesting thing that Mr. Philip said at the onset was about someone who either was involved in organized crime or alleged that he might be involved in organized crime. You could not automatically assume that someone who was talking that way was not using their knowledge of what was purported to be organized crime tactics which they could see on television or the movies. Obviously, everyone who is allegedly involved in organized crime just is not.

What I might say right at the beginning is that the Criminal Intelligence Service of Ontario, which comes under the Ontario Police Commission, has an intelligence retaining and retrieval system where matters of this sort are normally referred. The working body, police officers or various police forces throughout the province including Metropolitan Toronto and Ontario Provincial Police, meet monthly and bring these matters forward.

If an urgent matter is brought up, it is only a phone call away and there would be discussions. I do not have any knowledge of this particular instance, but a number of investigative techniques would be undertaken, including, first of all, looking further into the circumstances, determining who allegedly made the threats, if they were threats or intimidation, examining to see what evidence might be gathered to ultimately prosecute.

That is the whole business of gathering information. It is not to create a great store of information which is there so you can refer to it, it is to provide protection to the people of the province.

Mr. Philip: My original question was that I really do not know what more the OPP could have done, once they got involved. But my concern was that when the man went to the local police, I did not feel they gave him the psychological support he later received from you people—it was necessary for this man to withstand psychological warfare against himself and his family. There were statements like, "So-and-so is still around." The other one would say, "Yes, we haven't taken care of him yet, have we? He sure stepped out of line, didn't he?"

That kind of thing went on for a period of months. My question is, are the local police forces informed to contact you people to get the assistance of the OPP intelligence when this kind of thing comes up? Or is it simply treated in the traditional way? You cannot deal with all

communities in the same way you deal with the Anglo-Saxon community; there are different ways in which different types of crimes take place in different communities.

Is there more work being done to educate local police forces that if it gets beyond their scope, they should alert you people so you can move in?

Hon. G. W. Taylor: Shaun MacGrath operates the Ontario Police Commission, which operates this function you are talking about, the exchange of information between the forces, and would better explain that.

I was going to add one other feature, the computer at the Criminal Intelligence Service of Ontario that Mr. Lidstone referred to. I guess we run into complications: how much information we put on there, which is all suspicion information, and that type of thing might show up on this individual you mentioned.

If they plug that individual's name in there, it might show up that this was a recurring event with that individual, and then it would assist. But one event would be difficult, except that having received information on that one event they would put it on the computer. As repeated items came in, then a greater evidentiary background would be accumulated.

My knowledge of it, and Shaun MacGrath can explain it more fully, is that they do watch different communities. They obtain information on different ethnic communities as ethnic communities develop, because understandably, as you have stated, different communities have different aspects about them. But it is still all looked at as an overall crime prevention process rather than singling out any individual community. Overall, it is a crime prevention process developed by the Ontario Police Commission.

Shaun, you might explain more fully what the CISO does and how it developed its background and information.

Mr. MacGrath: Yes. What would have happened is the investigating officer would file a report with the central repository at the CISO bureau had there been any substance to it—I do not know as I am not aware of those particular incidents. The CISO prevention bureau is actually the repository for the collation, analysis and dissemination of all intelligence material coming from across the province.

The bureau is made up of the 26 larger police forces in the province, including the Ontario Provincial Police and representatives of the Royal Canadian Mounted Police. Its sole purpose is to continue the battle against organized

crime. But the officers operate the bureau. It is run by police personnel under the direction of the governing body which, as Deputy Commissioner Lidstone said, meets monthly. The operating body also meets monthly. As a matter of fact, they have just finished a two-day meeting.

I do not know if I am out of line or not, but if you wanted to give me the details privately, Mr. Philip, I will—

Mr. Philip: I have supplied all the details, a blow-by-blow account of every word they have ever said or that has been told to me to the OPP. I called John and then through him I contacted the appropriate office. I think it was probably your office to which I was speaking.

Maybe we can approach it from this angle. What advice would you give to an MPP or anyone else who is faced with this kind of case?

I told my constituent that he should do two things. First of all, I gave him one of my cards and said: "Display it visibly when the guy comes in next time. Say that you have informed me of everything and that I have gone to the Solicitor General with it, that I have informed him if anything happens which is the least bit suspicious, the Solicitor General will be immediately informed."

That seemed to work for a while. They suddenly disappeared and there were no more heavy-handed tactics. I thought by at least having these thugs— One fellow called himself "the enforcer." This is right out of one of those movies; you cannot make up stuff like this. At least then they would back off because they are not afraid of me but they are afraid of you guys.

It seemed to work for a while, but after, they came back. Now it may have been the economic conditions or something which forced them to come back on it and he eventually caved in in this case.

In other cases I suggested they at least say either they have gone to me and that I have gone to the Solicitor General or that they have let the police know what is happening.

Does this have an effect of having the coercive element back off in a lot of instances? Is that the right tactic for us to take?

Hon. G. W. Taylor: I could not give you the results of that, of what would take place to the individuals who are professing to be part of an enforcing group. They could be anybody. You get suggestions of people who know other people, people who know people in authority, all different combinations of threats in our society which border on criminal activity.

If you were to do as you have suggested, send

a summary of your concerns, I usually detail that through the Ontario Police Commission which then handles it through the respective police forces. I do not know what the success factor is. I have not had enough instances to determine the success factor of that.

Anything brought to my attention as Solicitor General that is primarily the function of the Ontario Provincial Police would go to the commissioner. Commissioner Erskine would then detail the branch of the Ontario Provincial Police to deal with that. If it was a force other than the Ontario Provincial Police, I would put it through the Ontario Police Commission which would funnel it to the particular police force.

Mr. Philip: Essentially, we have two options. One is to go quietly to the OPP, in which case their investigation might be improved by the alleged offending parties not knowing that. The other is to try to protect the individual by at least letting the offending parties know that someone is monitoring their actions and so forth.

My first concern is to save the constituent from having anything happen to him, his family or his property. On the other hand, I have this feeling that if I report it quietly, maybe it will be easier to lay charges against these people. I am not quite sure how to balance one with the other; I would like the police commissioner perhaps to give his impressions on that.

Hon. G. W. Taylor: I think I would ask Deputy Commissioner Lidstone to comment on that and possibly Shaun MacGrath. I do not profess to be an expert at all in police methods. What method would be successful one time may not be successful at another.

As an MPP, before becoming a minister, I always passed the information on to the particular police authorities and allowed them to do it, in that they are the professionals and the experts in the field of crime prevention, and make them aware of it.

Mr. Philip: No one is questioning passing it on. It is a question of whether you pass it on and let the offending parties know it has been passed on, as a way of trying to get them to back off, or whether you pass it on quietly with the hope that you guys can nail them more easily.

Deputy Commissioner Lidstone: If an offence is committed, I suppose my initial reaction is that it is much better that you attempt to apprehend those people and gather sufficient evidence so you can prosecute them. Prosecution, one would hope, would have greater

impact than someone saying, "I have spoken to a particular individual." It might not work.

It would depend a lot on the community, on the person who is being threatened, how real he perceives the threat to be, how concerned he is, and whether in fact he is prepared later to become a crown witness. It does take witnesses, and we appreciate that.

The initial reaction is that if he tells someone he has advised the authorities, they back off for a while, but how long do they back off? As you point out, and rightly so, that worked for a short period of time and then they decided they were being counter-threatened and they were not going to bow to that type of threat.

It is awfully hard to say you should always do this, because I think it depends on the individual circumstances, exactly what has taken place, the people involved. To given an opinion that you should always do a certain thing, handle it by a certain method is rather rigid. You should have a lot more flexibility.

We welcome public input. We have to have the co-operation of the people, the victims or apparent victims of dishonest schemes and/or crimes.

Mr. Philip: Are there special officers who are trained in giving a kind of psychological counselling to these people—I am sure we know which communities we are talking about—to help them to withstand the kinds of psychological pressures that come from all of this kind of coercion?

The biggest problem I have, whenever I get a case, is that when I say, "We have to go to the police," they are afraid to do it. I have lost one after another when they simply say, "No, I cannot take the chance." They trust me and they trust the police, but they just do not trust what else will happen to them, their family, their property, their business or whatever.

I am sure Mr. Spensieri has examples, not only as an MPP but also as a lawyer. I am sure he has run into this kind of thing in his riding, which is right alongside mine.

Mr. Spensieri: Could I interject something here? The difficulty here is really a matter of credibility. If you show up at 31 Division, for instance—my own constituency office is right next to it—with an MPP or a lawyer and you say: "Look, there have been threats. There have been threats over the phone," or "threatening in person," or "visitations by these individuals," then the matter is taken quite seriously.

I had one instance where a solicitor who had begun foreclosure proceedings in a property in

the vacation district received calls from the mortgager to abandon those proceedings immediately or his office would be blown up. The solicitor had no difficulty whatsoever, not only in getting the co-operation of the local police force in 31 Division, but immediately there were three visits by intelligence officers from the Ontario Provincial Police who came down with a complete profile on the mortgagers who happened to have criminal records and who had been engaged in these types of activities before.

The case was taken very seriously, not only because of the nature of the complaint, but also because the particular offensive individuals happened to have already enough substance in their misdeeds that warranted a severe interference.

The difficulty I run into is with the run-of-the-mill constituents who receive these types of calls, especially now in matters of collection of moneys, in matters of foreclosures on properties, and in matters of tenancies. They have no particular name, they do not know who the person is who is making the threat. There is no indication of their identity. They may have indications as to clothing, the car they are driving, the type of accent they have, or this sort of thing.

There should be some type of a mechanism set up whereby you develop a profile, so regardless of whether or not the individual who is threatened does proceed to lay a criminal charge, there are names which keep recurring in the community. There are methodologies which keep recurring.

There are other badges, if you like, or ways of identification, which keep recurring. With all levels of police forces working together, there should be some type of profile set up, so when someone comes in and says, "Look, I was threatened by a guy in a blue sedan that happened to have New York licence plates," that should be sufficient to trigger some kind of a retrieval mechanism. Then the person who has been threatened knows at least where to begin.

Many of the times you just do not have enough information even to go to the sergeant behind the desk at 31 Division. When you do get there—and unfortunately I have to say this—a lot of them have a very cavalier attitude, like, "Oh sure, everybody is in the Mafia," or, "You are afraid of everybody; you are afraid of your own shadow," and this sort of stuff.

In a community such as ours there is a real, present and high current level of criminal

activity. It is connected, as I said, mostly with the collection of debts and the collection of funds right now, which seems to be the prevailing activity.

Mr. Philip: It is real-estate related.

Mr. Spensieri: Yes, real-estate related. All I am really arguing for, I do not know whether this is practical or not, is some kind of a profile identification system.

Hon. G. W. Taylor: I can only say at the outset that when you are talking about different communities at the Ontario Police College part of the course is to make the individual people obtaining education aware of the different communities, but not in the activity you are discussing, more in a public relations role. That is part of their basic education. When you get to the other area, that is treated as a specific crime in relation to any community.

I might ask Shaun MacGrath now just to explain, given the situation you are presented with, the mechanics in that coming in, and what would be the result—how it is put on a computer, who puts it on a computer, how an individual force can retrieve that information, and how that information is exchanged.

You might explain that to Mr. Spensieri to show how it is done in a mechanical method. The other part that gives Mr. Spensieri more concern is how the officer at the desk receives the information and how he deals with it. That is the human aspect.

Mr. Spensieri: What backup does he have?

Hon. G. W. Taylor: Yes, he has the backup. It is a matter of whether that officer makes the decision to retrieve the backup, to be sympathetic to the individual presented to him. I would hope he would be, but that is probably the crucial part. When you are going in to see that officer on the desk, is that officer receptive to that individual's complaint, issue, concern, whatever it might be labelled?

Mr. Philip: That is related to Mr. Spensieri's question and we should identify them clearly, otherwise we are going to talk about this for a long time. One is the front-line officer who gets involved, and what kind of training is given to him so he is empathetic to the person who comes in, so he does not immediately brush it off as interfering with his catching the drunk on the corner or whatever other things are important at the moment.

Second, what kind of backups are available in terms of getting someone in there who requires the kinds of special skills necessary to help this

person to face the fact he must hang hard on it and cannot back off. He needs a tremendous amount of psychological counselling—I would, if I were faced with this kind of threat; I am sure most of us would—and the profile of how these people operate so at least the person who is suffering from these people knows what is likely to happen. The unknown is even more fearful to a lot of these people than the real world of probabilities.

Mr. MacGrath: For the last two years we have been accentuating and emphasizing in all levels of training, from the recruit constable upwards, that once the person goes to the police force, irrespective of who it is, he or she has to be given a fair hearing. The officer has to be sympathetic.

Now, I will not for a moment try to deny that the odd time you will find a cavalier officer. All of us who were at estimates last year here will remember a young lady who came before us, a G-string operator, who made some allegations she was not getting a fair shake from Metropolitan Toronto. She had been threatened—

Mr. Philip: Your choice of words was inappropriate.

Mr. MacGrath: She sat here before this committee. She gave us some information.

Concerning the actual intelligence officer who goes out to interview the complainant receiving the threat of organized crime such as you have mentioned, sir, we like to think these intelligence officers are very highly trained. There are at least four courses conducted at Aylmer every year as to how to get the right information, what to do with that information, how to get the machinery set up within the commission.

I am not a police officer but from where I sit the problem the law enforcement people are having is getting these people to come back the second time or to elaborate on the statement. Unfortunately we come up against the closed-mouth syndrome. People will not talk. It is fear and we are trying to overcome that.

Mr. Philip: I think though that what Mr. Spensieri is getting at—and I am going to try to get at it from a different angle—is that what is surely needed is an operations model. I can recall working at Canada Manpower and they tried different models. One was to train the person on the front desk to do two things: he had to recognize what the problem was, and whether it needed a highly skilled person to

handle the problem or was it just a routine kind of thing.

In other words, if a plumber came in for a job at Canada Manpower, and there were 20 jobs for plumbers, the man would send him over to Mr. Smith, who is simply a job placement officer; but if it was a fellow with a psychological problem he would know enough to send him to a more skilled psychological assessment person.

Surely at the police desk you have to have someone who first of all could show some sympathy, who could listen and do the kinds of things that you have been mentioning; but the person should also recognize when it is above his head and when he should get extra help from someone who is more skilled and has more time to devote to this kind of case.

I suggest you need some kind of operations model to look at so the officer would know when it was not something he could handle himself. He would recognize it was something he would send to officer so-and-so. He would cool the situation for the time being, make them feel something is going to be done, but then would bring in a skilled person who is trained in handling that kind of problem.

Often what seems to be happening is that the police officer at the front desk tries to handle it himself, but he does it in a superficial way. He does not give the kind of support that is called for, and then your sources of information dry up.

I am just suggesting you have to look at that problem of establishing a model. You might want to look at other ministries—federal, provincial or whatever—and see how they deal with various situations on the front lines in what amounts to really as much a counselling situation as information gathering.

Mr. Spensieri: If I might add, once the machinery is triggered it is excellent. In fact it is really beyond reproach. In the case I had, three OPP intelligence officers showed up with a file on this fellow which was enough to choke a horse. It was so well done—documented from the day he was born it seemed—and they had even gone so far as to follow his movements from Elmvale to the outskirts of Metropolitan Toronto.

All I am really saying is the question is not one of excellence. It is a question of how do you ensure that when you are dealing with a vicious segment of society such as organized crime the complainant is given benefit of the doubt at all times almost. I think that is what we are really

asking for—that whenever there is any allegation made of an organized crime threat, the benefit of the doubt would be given in every instance, even if it turns out to be a completely hopeless wild goose chase.

We at least have to give it the priority it deserves, especially in Metro, because it has become a tremendous concern. It seems everyone has in one way or another has been victimized by people alleged to be members of organized crime.

I am just saying somehow there has to be a profile developed so that—I am sorry to be belabouring the point but I think it deserves belabouring—so there is a commonality of methodology; there is a commonality of names which keep recurring; there is a sort of cause-and-effect similarity in how they operate, even though you cannot pinpoint specific names.

To use an analogy, it would be the same as when we asked for the police review commission to keep the names of officers on file, not because they were found guilty of misconduct but for the frequency with which their name came up in allegations of misconduct. This was in order to aid in dealing with them later.

I am arguing for some sort of a similar computerized system, whereby if a name keeps recurring, even though nothing can really be pinned on him, it will be treated with the degree of seriousness it deserves.

11:30 a.m.

Hon. G. W. Taylor: I think your comments are well taken. I am sure the chairman of the Ontario Police Commission and my staff will bring your concerns to the attention of Police Chief Jack Ackroyd, particularly since you mentioned Metropolitan Toronto.

Your concern and mine, however, is that front-line officer. Those officers' education is improving. The people chosen for that role are, we hope, the best; but one would recognize too there are lapses in their attention.

I think, when someone comes in, they do have that backup procedure available to them if they desire to obtain it, because all the different police forces are plugged in to the computer system. The name is taken on the police report or whatever document they are using to take the person's statement. The police officer should give each one the attention he or she deserves.

It is just an electronic process: you just type the name in and it should plug in to all of the activity of that individual. If it is a repeat, as you have said, if there is something repetitious about it, the person probably would have been made

known to police intelligence or police information systems before.

The Toronto force has its own college here in Toronto which provides updating on educational information for improvement of its officers in all aspects of policing, and I would hope—as I think Chief Ackroyd does—that would be the process they go through in improving.

As Mr. Philip said, I am sure they must have a model that is used. Surely the officer at the front desk—

Mr. Philip: It should be possible, in the estimates next time, for you people to come in and say: "Here is a model. Here is how we are saying this should operate in this type of situation. Here is what we are training our officers in. Here is how they will recognize it so that they know the route to take."

The other thing I suggest may be needed is public education, particularly in these communities. I can recall—and it is a much simpler kind of problem—that Bell did a fairly good job a few years ago in educating people about what to do when they got obscene phone calls. They gave specific instructions and they persuaded people not to use some methods they were used to using, such as blowing whistles on the phone, because people who have their ear drums shattered can also whistle and do the same thing back to you. I thought it was a fairly good technique.

It may be necessary also for you to develop public education in certain communities to instruct how to handle it if one is faced with a perversion. You could say, "We know these things go on, but instead of panicking, here are the routes you take." Even if one out of every 20 takes that route, combined with the kinds of things Mr. Spensieri has been suggesting, you may be able to get a prosecution.

The worst thing, and I am sure you are finding this, is that people just clam up and hide.

Hon. G. W. Taylor: I would hope they would not do that but understand there is always an open-door policy, and an empathetic and sympathetic police force working throughout Ontario. I hope all of them are doing their best, and that no one is ever reluctant to come to the police for assistance, because that is what they are there for.

I was just quickly going over part of the course contents at the Ontario Police College. Of course, some of these items would surely have been in there. It is a rather extensive area. You hope it is all learned, retained and used.

I will go down the list: powers of arrest, search, seizure, use of force, laws of evidence, traffic laws, physical training, Provincial Offences Act, crisis intervention, multiculturalism, communications, practical exercises, drug recognition, memo book, care and handling of prisoners, justice panel, credit card file, Canadian Police Information Centre—CPIC, which concerns the use of the computer system—and defensive driving.

In another part we have added: police procedures, collision investigation, criminal offences, crime prevention, practical exercises, Centre of Forensic Sciences, protection of crime scene, preservation of—

Mr. Philip: We know what is in the course; I mean we have—

Hon. G. W. Taylor: I recognize that, but I just wanted to list it: police ethics, Criminal Intelligence Service of Ontario—it is all there. They have all learned it or taken it at some time. Now it is a matter of educating and prompting them so they are using properly the information they have been taught and with due discretion and exercise of their police duties.

Overall they have, and I hope, as you have brought it to our attention, we can bring it to the attention of those forces—

Mr. Philip: I want to ask one other question on this. The last—

Mr. Chairman: Mr. Philip, might I interrupt? We have exactly three quarters of an hour. I do want some time left for vote 1705. Mr. Brandt has indicated one question on vote 1703. Could you please perhaps wrap up your concerns on this by the eight or 12 minutes to noon mark?

Mr. Philip: Yes.

Mr. Hilton: May I just comment: I very much appreciated the fact you did contact me and sought advice as to the course you might follow. I do not feel any fault in myself that I put you on a wrong course as to who to contact.

Mr. Philip: As far as I recall, on all the numerous phone calls I have made to you, you have never sent me in the wrong direction. You may have sent me to someone who suggested someone else in his particular branch might better handle it. I have always received what I considered good advice from you.

Mr. Hilton: Thank you. In this regard, situations vary. I do not think any of these criminal situations can be stereotyped. They depend very much on their own factual situations. The advice you gave your constituent at that time

was very sound. It was followed. It had a salutary effect for a time. The advice was made known to the police authorities.

If thought pertinent, it would be undoubtedly placed on file, either computer or manual. On the other hand, I do not know exactly what the information was. It may well be the information was of such an inexact nature that the filing of it alone would have been very difficult.

In any event, I commend you for taking the responsible position you did as their member of the provincial Parliament in sending them to the authorities. We are only too pleased to guide them, at least as a beginning, to the professionals who can carry on from there.

Mr. Philip: Thank you.

The question I have now is related to some of the articles that appeared in the *Toronto Star* and the *Globe and Mail* on July 7, concerning the hearings in Hamilton. Is there an increase in what you consider to be organized crime on the Montreal-Toronto-Buffalo-whatever connection?

Second, with your improved intelligence service and your computerized systems and so forth, why would those intelligence tapes they talked about have been destroyed?

11:40 a.m.

Mr. Hilton: Mr. Philip, may I just remind you, sir—and I am sure I do not have to do this—

Mr. Philip: It is before the court.

Mr. Hilton:—this is before the court and hearings are going on this very day. I sometimes wonder why this particular judicial process is being carried on, but nevertheless it is in that court and in the wisdom of that judge. I think it would be awkward for us to—

Mr. Philip: Maybe you can answer the second question at some other time or answer it privately, off the record. Is there, in your opinion, any increase in organized crime in this province?

Hon. G. W. Taylor: I will have Shaun MacGrath answer that, he keeps all the statistics. Or probably Deputy Commissioner Lidstone might have some—

Mr. Philip: I am talking about organized as distinct from disorganized, which seems to be on the increase—hooliganism and that kind of thing.

Mr. MacGrath: The work load of the CISO bureau has increased dramatically in the last year. We have had to expand the number of police officers seconded from forces; we have had to inject some analysts to keep tabs. At the risk of answering for the minister, I would say

yes, there is an increase of criminal activity in the province.

Mr. Philip: And it is in an organized fashion rather than—

Mr. MacGrath: Rather than disorganized; yes.

Mr. Philip: Is it mainly US connected or all Montreal connected? Is it a syndicate kind of crime in an organized, corporate sense rather than in the small business sense of some of the crime in the past?

Mr. MacGrath: Yes, I would have to agree with that.

Do you agree with that, Deputy Commissioner?

Deputy Commissioner Lidstone: Yes. To say it is all connected to the United States or it is all connected to Montreal would be in error, because there is lots of local talent. We do not have to import that type of talent. But there certainly are interconnections and they become more apparent at various times.

Mr. Philip: If I wanted to get into the business, so to speak, I would think one of the more lucrative areas for me, if I were already in the business of organized crime, would be to get into the cult business.

Are you finding an increase in the number of complaints about cult activities? Is there any connection you can come up with between any of these cults and the traditional underworld element?

Mr. MacGrath: My answer to both questions, sir, would be no. There has been no increase in complaints arising from people who have gone into the cults. As far as I am aware, there is no direct connection between organized criminal activity and the few cults we have in Canada.

Mr. Philip: I hope I have not given the underworld free advice on what they could get into.

Mr. Hilton: Maybe we could deal with it better if they were in it.

Hon. G. W. Taylor: Counselling criminals, aha.

Mr. Philip: That was not what I was trained for in management school.

I have one other area of interest which comes under this vote, and it is basically connected. Some of my colleagues get a little anxious when I bring it up. Occasionally newspapers write editorials attacking me for it. While I may be considered a moderate in my party economical-

ly, on certain things, such as civil liberties, I am considered a little bit more radical.

One of the things I am concerned about is the accountability and the professionalism of the police. I see more and more the movement towards citizens' groups, that are well-meaning and that undoubtedly do have an effect in crime prevention and conduct good educational programs, but I am concerned we develop mechanisms by which these groups are accountable to, or at least very much under the supervision of the police, who are the professionals in the game; otherwise we are open to vigilanteism and to other abuses.

Mr. MacQuarrie: Are you talking about Block Parents?

Mr. Philip: No. Block Parent is quite different from some of these groups that go out on patrols and things like that. I think there is quite a difference.

Mr. MacQuarrie: I wanted to just draw that to—

Mr. Philip: Block Parent is fine. If I am at home, any kid who has any problems knows he can always come to my house, even though I do not have a Block Parent sign in my window.

Mr. MacQuarrie: What about the Neighbourhood Watch program?

Mr. Philip: I beg your pardon? I cannot hear you.

Mr. MacQuarrie: The Neighbourhood Watch program that is being—

Mr. Philip: Yes. Neighbourhood Watch has some really good ideas and they have done some good things, but I am also concerned about making sure the Neighbourhood Watch program does not get into the hands of those people who could abuse it and that other groups—I am thinking particularly of the groups who have come over from the United States, the berets or whatever they call themselves.

Interjection: The Blue Angels.

Mr. Philip: The Blue Angels, who wear those tams or berets, or whatever.

I am also concerned about one group of citizens who suggested the police could stop patrolling a certain area because they could rent horses and could patrol the particular area instead of the police. That kind of thing worries me. It worries me because I know of certain people who, for whatever reason, join certain paramilitary organizations—and I have been a member of one myself, cadets and things like that. Certain people who join these groups have

certain power trips or biases which can come out; they are not accountable, in a way, in these groups. Police, at least, are accountable to the police commission and to public scrutiny, supervision and to proper training.

I am wondering if the minister shares some of those concerns. If so, what is he doing to monitor these groups and to make sure they are accountable to the community; and more particularly, that the police are in control of those groups rather than self-appointed people? We are going to see some abuses if we do not have some control over them.

Hon. G. W. Taylor: Mr. Philip, initially, the one group you mentioned—I guess we will call them the subway people; I think they have a name like the angels or blue wings, or something like—the Angels of Mercy. I have no—

Interjections.

Hon. G. W. Taylor: Whoever the subway group with the tams are—we will get their name eventually—I have no brief for them at all. Our police forces are doing a superb and adequate job and really need no assistance from those individuals. Streets of most, if not all of the metropolitan communities in Canada, and particularly Ontario, are safe to walk on day or night, and one can use the subway with a great deal of safety.

In conjunction with the Metropolitan police force, the Toronto Transit Commission, the different electronic devices and the surveillance by the TTC security people, we have a safe and efficient subway system. I do not think we are in need, nor do I condone, any groups that would want to lend themselves. I know they have been offering their services from the US areas. We have sufficient and adequate policing in Ontario and, in particular, in Metropolitan Toronto.

We have one group—I am sure you are not commenting upon this group in any adverse way or saying it is one that would fall within the group you mean—and that is the auxiliary police. They assist the regular police forces and they have a very necessary function to perform. They receive a certain amount of training. They are always in what is called an apprenticeship or—

Mr. Philip: And they are not paid.

Hon. G. W. Taylor: They are not paid. They are always in an apprenticeship situation or in a mentor situation with a regular police officer.

You mentioned the power-trip individual who might be in one of these other groups. When a police officer is taken on in a permanent

capacity, he or she has been assessed thoroughly by whatever manner or method is available to them, either by psychological tests, academic tests or behavioural tests. Any of the methods available have been used to get the best individual for the function of a police officer. These methods are not used for other groups.

Mr. Philip: The police auxiliary are not screened that way, are they?

Hon. G. W. Taylor: No.

Mr. Philip: Anyone can join?

Deputy Commissioner Lidstone: They are screened.

Mr. Philip: They are screened, with psychological tests?

Mr. MacGrath: No; not for us anyway.

Mr. Philip: But they cannot operate in any crisis except with another officer present, so there is a control there.

Hon. G. W. Taylor: The control is there on the auxiliary police in that they are always working in a mentor-individual relationship.

Mr. Philip: It is some of these neighbourhood patrols that are not organized by the police that I—

Hon. G. W. Taylor: I could not condone those.

Mr. Philip: I am sure the people who start them are well motivated and are probably perfectly sound individuals, but groups get taken over and those are the ones I am more concerned about.

Hon. G. W. Taylor: Mr. MacQuarrie has mentioned the Block Parent and the Neighbourhood Watch programs; they are not the kind you want to restrict.

Mr. Philip: That is a passive activity, though. That is not the kind that—

Hon. G. W. Taylor: No, they do not go out. They are what you would call—in a small town community and in much of Ontario it goes on as a matter of course, without labelling it Neighbourhood Watch and formally grouping people together.

As we get larger into areas and more independent in our conduct and our activities, these groups are created and bring people back together in a way, as do service clubs, as do many operations of a public service nature. The Neighbourhood Watch program is one of those, a way of assisting police.

Police, in their anti-crime or anti-criminal activity and crime prevention, often advise

people to tell a neighbour or the police if they are going on vacation. They also hand out information as to how to make homes more burglar-proof or less attractive to criminal activity by making sure the usual things are done—the papers are cancelled and different lighting arrangements are made.

In another fashion, just for the safety of individuals, some senior citizens have the postman checking on individuals to make sure they are well—

Mr. Philip: Maybe you have missed my question, Mr. Minister, because you seem to be talking around it. Maybe I can repeat it.

I am not talking about the passive activities of groups like Block Parent. That is fine. That is a passive activity. I am not talking about the educational activities, which I conduct through the community police in my own riding, and help in my riding association, which holds meetings to help people to learn how to burglar-proof their homes or try to make them safer.

Do you not have concerns about people who, without accounting to the police, without accounting to any kind of elective body, form themselves into groups and patrol? Now that is an active kind of activity. If Mr. Spensieri and I decide to get 10 MPPs and patrol a certain street and we are not answerable to anybody other than the 10 of us, we are getting dangerously close to what can be an abuse.

I am wondering if you have thought through how you as a minister, and how the police, can work with citizens who are legitimately concerned about this, to at least make sure these people—I am not sure these people should be out there patrolling in the first place, because I think it opens them up to dangers to themselves and to others and they are not trained. If they are going to patrol, I at least want the police to be in control of those patrols.

What are you doing to make sure there is control of these things, before we get an abuse of some group that goes on its power trip and abuses some minority group, or simply abuses a bunch of other citizens—

Hon. G. W. Taylor: We mentioned the sub-way angels earlier; the chiefs of police and elected officials of those particular municipalities have said they are not welcome nor needed in those communities. That has deterred them from forming and conducting patrols, as you refer to them.

The local police forces, through the Solicitor General, would only be watching activities of individuals if they were breaking any criminal

laws of the province or the country. Otherwise, they would not attract any attention. Whether it is a group or an individual, it always gives the police forces concern. Eventually subsequent charges would be laid if they were participating in any criminal activity.

To do any more than that, to go out and put every body under surveillance and watch what each and every individual group happened to be doing, would be offensive to the independence of associations and the independence of individuals in this jurisdiction.

Mr. Philip: Let me ask it from a different angle then. Are there specific activities—

Mr. Chairman: Excuse me. How many more items? We are running very short—

Mr. Philip: The minister keeps talking around the question. I am trying to ask the same question in a different way so I can get an answer.

Mr. Chairman: But, Mr. Philip, I must apportion the time.

Mr. Philip: I will ask one last question. I hope the minister will answer the question in very specific terms.

Are there certain activities which you believe should be conducted only by the police? Are there other activities that can be conducted by groups like Citizens' Watch? If so, where is the dividing line?

Do you believe, for example, that citizens should be able to form groups and patrol neighbourhoods or should that be a police activity? Do you believe, as Mel Lastman has suggested as part of Citizens' Watch, that there should be phone lines through which I, as a citizen, can call up and make allegations against another citizen without giving my name?

Those are two very specific areas that have to be addressed by you as the minister. Is there a line up to which a citizens' group may operate and after which only the police should be involved? If so, what is that and what are you doing to communicate that to the public?

Citizens' groups are important, but they should at least know where the line is drawn and where only the professional has the authority to act.

Mr. Chairman: Very briefly.

Hon. G. W. Taylor: Very briefly, I do believe there are areas under statutory situations. Naturally, they know those jurisdictions. Mr. Philip will not like the answer, but the police operate in a particular category.

Mr. Brandt: He did not like the first two either.

Mr. Philip: I did not know what the first answers were.

Hon. G. W. Taylor: If the police are carrying out their activities within the society and the law—

Mr. Philip: Should citizens be able to patrol? It is a very simple question. Should they be out on the streets in patrols? Do you agree with that or do you not agree with it?

Hon. G. W. Taylor: I do not know what Citizens' Watch does, but if they are out in a patrol activity and enforcing the law themselves and carrying out police functions, then, no, they are not doing that.

Mr. Philip: They should not be doing that.

Hon. G. W. Taylor: They should not be carrying out police functions, no. They are not police officers.

But to me that is a simplistic question: should the public be undertaking police functions? No. Police carry out police functions; the public do what they want to do.

I have great difficulty in answering it any more specifically than that. When you get into the roundabout areas of groups forming associations and there is an educational component of their association—as you say, your association educates people on how to prevent crime—I see nothing wrong with that process of educating.

12 noon

Mr. MacQuarrie: There are instances, particularly with respect to municipally-owned parks where municipal employees or residents of the area around the park take occasional—well, I would not call them patrols. I know of instances where two or three people walk through a park in the late evening just to make sure things are all right. Is there anything wrong with that?

Mr. Philip: There are licences for most people who do most of that kind of activity. We would call it, not detective but a commissionaire type of activity. I am concerned about those who form groups whose role is the physical patrolling. Unless they are accountable directly and under the supervision of the local police, I think it will open itself to abuses.

We are seeing a lot of groups formed, many by citizens who are doing good work in an educational capacity, but I worry when those people get out on the streets in a patrol type of capacity. The police are the ones trained to deal

with the kinds of crises those people are going to run into. I think we have to spell out the role of the citizen in terms of quasi-police activities and the role of the police.

Mr. MacQuarrie: Are you against the concept of citizen's arrest?

Mr. Philip: I will give you a very good example. There is one fellow who is a private detective but whose licence has not been renewed by this ministry. I will not mention his name, everyone knows him.

Mr. MacQuarrie: We have encountered the gentleman before.

Mr. Philip: He was in the process of making a very noisy citizen's arrest and one of the other members in the condominium talked him out of it. At least he was trained in it and he had some kind of licence to do that kind of thing.

If we have a whole bunch of people doing that, we are really open to all kinds of abuses, particularly if they go around in what I would call gangs or patrols. I worry about that. I worry about the abuses against minority groups that can happen.

Mr. MacQuarrie: It is a question of what is reasonable.

Mr. Philip: But it is also the role of the minister to spell out where the dividing line is. I realize it is hard to do, but he has some responsibility to do that and the police should be spelling out where the dividing line is.

Mr. Chairman: Thank you, Mr. Philip.

Shall we go to Mr. Brandt with the matter of policing on reserves under this vote 1703, item 1?

Hon. G. W. Taylor: On reserves? This is Ontario Provincial Police.

Mr. Chairman: We discussed this. Take a crack at it quickly, Mr. Brandt, and if they still shake you off—

Mr. Brandt: I can be very brief. How much time do we have, Mr. Chairman, because I want to get two questions on the record?

Mr. Chairman: We have 17 minutes.

Mr. Brandt: Could I have the indulgence of the committee? I have two questions that are of importance. They may not fall under this vote specifically, but if the committee will allow, in view of the time constraints, I would like to get both of them cleared at this point.

The reason this particular matter does not fall under the Ontario Provincial Police is that the reserve in question, the Chippewa Indian reserve in Sarnia, in 1951 was included in an annexation

by the Ontario Municipal Board as part of the city of Sarnia. The Solicitor General has had correspondence with me in connection with this issue and I bring it up, not only to discuss the Sarnia situation, but to discuss a broader, perhaps more complicated situation that may exist elsewhere.

The city of Sarnia, under an order of the Ontario Municipal Board, had to incorporate these particular lands, about 3,000 acres, in the municipality of Sarnia. Quite obviously, an Indian reserve does not pay municipal taxes. I would take issue with the decision of the Ontario Municipal Board back in 1951, but that decision has been made. I would have to say that, in my opinion, it is probably an inappropriate and bad decision. But it was, in fact, made.

The problem arises that over the last few years the Ministry of the Solicitor General has been providing some funds to the city of Sarnia indirectly through the Chippewa Indian reserve, along with some funds provided by the federal government, in order to cover some costs associated with policing on this reserve.

I have two questions, Mr. Minister. One, is there any established set formula for the expense associated with policing a reserve that is incorporated within a city? Second, are there similar situations elsewhere in Ontario?

I know this is a relatively unique situation, but I find it rather awkward to keep coming back to the Solicitor General or to your ministry, sir, almost on an annual basis now, to ask for more money because there is no set formula, no pattern, nothing to grab on to that relates to the type of funding appropriate for that particular problem.

Mr. MacQuarrie: Mr. Chairman, by way of supplementary, although I am not familiar with the policing aspect, I believe that an almost identical situation exists with respect to the Cornwall Island Iroquois reserve. It was incorporated by order of the Ontario Municipal Board into the city limits of Cornwall.

It is further complicated by the fact that the reserve is partly in Quebec, partly in Ontario and partly in the state of New York.

Hon. G. W. Taylor: A review is being done between the province and the federal government of policing for Indian reserves. That may shed some more light on solutions. In the meantime, we have Mr. Lorne Edwards here, and the deputy minister, who would like to comment on the reserve in Sarnia and the one you have mentioned, Mr. MacQuarrie.

Mr. Hilton: Mr. Brandt, the present situation in relation to the policing in that reservation is that there is an agreement being signed between Sarnia and the municipal police force and the reservation. We have received certain figures in relation to estimated costs. These are being referred to the OPP who have experience with band constables and costs of policing on reservations to see if those figures that have been sent to us by the Sarnia authorities are reasonable for the type of operation being carried on.

We are in the middle of determining whether those figures are reasonable to assist Sarnia in knowing whether they should sign on this basis or not.

Mr. Brandt: In effect, then, there is no formula in place. You say that particular matter is under review, but there is no formula as such for the payment of policing in this kind of situation.

Mr. Hilton: Not in that precise situation, but there are on band policing in other reservations, and they are all with reservations where the OPP and the band constables operate, not where a municipal force operates. This is the only reservation within a municipal confine.

Cornwall has the same. Peter Gow has been working out these arrangements. We do share the cost of policing with the feds on a 60-40 basis.

Mr. Brandt: When I speak of a formula for purposes of assisting the municipality that ultimately has to pay the bill up front and then collect from another level of government, you do not have a per capita formula based on the population of a reserve or anything of that type?

Mr. Hilton: No, the supervision is generally worked out by the Ontario Provincial Police. It has its particular area of responsibility for native policing and policing on reservations. They determine what is adequate policing for that particular reservation.

12:10 p.m.

The Cornwall situation you brought up is unique, because there we have a share with Quebec. We also have a share in the United States, because that reservation covers all borders. It has to be treated quite separately too.

Mr. Brandt: The second question I have is a relatively complex one. It really came to light when the Solicitor General was reading his opening statement, and I quote it, the OPP being the force in question. His statement was: "The force is also responsible for policing the

vast majority of the 174,000 square kilometres of Ontario waterways."

I want to ask the Solicitor General what is the criterion for policing Ontario waterways. In the situation I want to bring to your attention, namely the St. Clair River and Lake Huron, first of all, Mr. Minister, it is an international boundary and there are very serious jurisdictional problems in a situation such as I have in my own community.

The municipal boundary, as I understand it, goes to the middle of the river or where the international boundary exists. There has always been a question as to whether the RCMP, the OPP, or a municipal police department is responsible for the actual cost and expense of patrolling that waterway.

First of all, within 60 miles of the area I am speaking of is the largest registration of recreational boaters in North America, primarily in Lake St. Clair, which is immediately to the south. The Detroit metropolitan area has a very large number of recreational boaters who use the waterways in the Sarnia area with some frequency. It also is one of the heaviest commercial traffic areas in the entire province. Whenever you have commercial boating and recreational boating in some kind of conflict, using the same waterway, situations arise from time to time where patrolling the waterway is essential.

At one time there was an RCMP boat in that area. The RCMP removed the boat. They indicated they did not have jurisdiction in that area. The Sarnia force took it over on a temporary basis, and attempted to get funding from other levels of government, with no success whatever. At the moment, we have one of the busiest waterways in the entire province with absolutely no patrolling being done by anyone.

Not only is there smuggling going on there, but this season already there was an alcohol-related boat accident and some very serious and critical injuries occurred as a direct result of that, which is relatively common with recreational boating.

For purposes of safety and rescue operations, that area relies almost totally on the US Coastguard, which is a bit of an embarrassment. In other words, if a boat capsizes or takes on water or has a problem on the Canadian side, we have to call the Americans and get either the sheriff's office out of Michigan state or the US Coastguard if they happen to have a boat in that area.

The matter is very serious. It is one that I

would like to bring to the attention of the Solicitor General, because I believe that someone, sometime, somewhere, has got to accept responsibility for that particular piece of waterway.

Surely, if 174,000 square kilometres of waterway are served by the OPP, somehow we could find sufficient money in the budget to be able to make available to that area some OPP patrolling, when in fact it is one of the more sensitive areas of the entire province in terms of total traffic, potential difficulties relating to the volume of activities that go on and so forth.

I want to raise the question to really discuss the whole matter of jurisdictional problems that exist in that area. Here we have an international boundary, with three levels of government all washing their hands of the situation and saying they have got nothing to do with it. The problem continues unabated and I would appreciate your comments.

Hon. G. W. Taylor: Yes, Mr. Brandt. The figure about the number of square kilometres of waterways in Ontario was used in my material at the outset. It is an extensive amount of waterways to patrol. We have something like 17 launches and 77 skiffs which logged approximately 12,418 hours of patrol during 1981. They do patrol the area you were talking about, the St. Clair River and Lake Huron, as well as all the other waterways. As you have mentioned, it is a large territory.

If you want some more particular information, the commissioner of the Ontario Provincial Police, James Erskine is here. He can explain how his force goes about the patrolling of the individual waterways. There is, naturally, a jurisdictional problem. You are discussing an international boundary which is more complicated.

It is a commercial waterway with a great deal of international traffic as well—when I say international, I mean between the US and Canada. There are international ones with a lot of other countries besides those in North America, so it is very complicated.

I will have Commissioner Erskine explain the process the OPP use in patrolling that particular waterway, as well as the other ones in Ontario.

Mr. Mitchell: Just before he does and just to clarify: Mr. Brandt is saying no one is policing it, Mr. Minister. Did I hear you clearly? Did you say the OPP is policing that area?

Hon. G. W. Taylor: Yes.

Mr. Brandt: I would very seriously question that, Mr. Minister. I have yet to see an OPP boat in that area for any purposes. If a vessel was having some problem, the people would all drown by the time the OPP boat got there. We have to rely on a foreign country to provide the boats to assist us for safety or for rescue purposes.

Commissioner Erskine: I would agree there is a problem. It depends on the level of policing we can give with the resources we have. While we have that number of boats, you must admit there is an awful lot of water here in Ontario.

If I remember correctly, you have a unique situation in Sarnia. Do not the Sarnia limits go out to the centre of the river?

Mr. Brandt: Yes, I mentioned that in my preamble.

Commissioner Erskine: I am sorry, I missed that.

Mr. Brandt: The city limits do go out to the middle of the river.

Commissioner Erskine: We have similar problems in some of the new regions where the municipal boundaries go out to the centre of Lake Ontario, in Peel-Halton and Niagara, for example. We try to cover as much of the province as possible with the number of boats and the people we can put on them. If there is a jurisdictional problem, our policy is that members will take the enforcement action required but not get involved in any jurisdictional dispute.

As the minister said, we have 17 launches and 77 skiffs, and they logged approximately 12,418 hours in 1981. In number 1 district at Chatham there is a 20-foot inboard-outboard boat that patrols Kent county on the west side of Lake St. Clair. At Essex there is a 26-foot twin inboard-outboard boat with a speed of 45 miles an hour. It is assigned to Essex county, Lake Erie, Lake St. Clair and the Detroit River. I do not know how far the boat goes up the river but—

Mr. Brandt: Just quickly calculating the speed of the boat and the distance, I would say that boat is about two hours away from a difficulty at the mouth of Lake Huron. That is the narrowest point of the entire river, where most of the accidents have occurred because of the hazardous circumstances. The river is very fast and there is a lot of traffic in that area.

12:20 p.m.

I stand by what I said before in that there is literally no patrolling going on in that area.

There is no enforcement of water-skiing requirements, as an example; having life jackets or an observer on the boat along with the driver. Those kinds of things are not being enforced.

There is little, if any, enforcement at the marinas, where there is a fair amount of recreational boating and drinking which is associated with that. Drinking on a boat is just as hazardous as drinking in a car. Alcohol-related offences are going on in that area on a pretty frequent basis. I believe they create some problems that should be addressed by someone. The boat you are speaking of is too far away.

Commissioner Erskine: This has been an ever-increasing problem over the past few years. I agree we are only scratching the surface as far as waterway policing goes. I thought the Sarnia police department looked after the problems close to shore. Did they not have a boat there?

Mr. Brandt: They borrowed a boat from the fire department, which was essentially a rescue boat. That boat was questionable in terms of its safety. Because of the age of the vessel it was withdrawn from service and the city decided not to put another one into use in that area. They feel it is not a city jurisdiction.

Mr. Mitchell: I think the commissioner's comment bears one question. Based on the comments Mr. Brandt has made and the coverage area you have, are there any proposals by the Ontario Provincial Police to the ministry to say, "Look we have a problem and we need more boats, and so on"?

Hon. G. W. Taylor: No, there is not. As always, we try to deploy the forces, be they cruisers, radio equipment, inspectors, motorcycles or snowmobiles, in the most efficient manner within the budgetary process of the Solicitor General and the Ontario Provincial Police. With the square miles and kilometres of waterways to cover, the number of launches or boats necessary to patrol that as Mr. Brandt would want, both for criminal activities and for search and rescue safety is—

Mr. Mitchell: I really only latched on to the one comment the commissioner made. He thought the Sarnia force was doing something. The problem with that is he only thought it was.

Mr. Chairman: Thank you. Mr. Brandt, one tiny, quick question.

Mr. Brandt: It is just an appeal, frankly, to the minister and to the OPP. In your review of the placement of your launches and the skiffs—and you mentioned you have close to 100 units somewhere in Ontario—I wonder if you might consider, sir, taking a look at the volume of traffic in that area and perhaps rearranging your priorities somewhat; looking at an area that has less traffic and moving some of these units around. It is a major concern of mine and it involves more than just the Sarnia area. There are a number of boats that come in from Michigan and other areas for recreational boating purposes and I do not believe it is a municipal jurisdictional responsibility.

I would appeal to you to take a look at your priorities and find a way to make a boat available in the Sarnia area, if at all possible. I know you have a hard-pressed budget, I know you have difficulties. I see the chairman has his gavel ready to launch himself, but I want to get on the record the very serious concern I have about the problem that exists in that area. I would like you to take a look at it if you could.

Mr. Philip: While you are at it, patrol the Trent River system. I am spending all kinds of money in erosion control as a result of speeding boats down there as well.

Mr. Chairman: And the Pickerel River near Lake Nipissing.

Thank you, gentlemen. Shall we now vote upon the various votes and items?

Item 1 agreed to.

Vote 1703 agreed to.

Mr. Philip: We are doing this because he is a new minister. He is not going to get off this easy next time.

Vote 1704 agreed to.

Vote 1705 agreed to.

Mr. Chairman: Shall the estimates be reported?

Agreed.

Mr. Philip: Mr. Chairman, I just have one question. Should the minister-in-training not receive less salary than an experienced minister?

Mr. Chairman: It is too late, Mr. Philip. You had your chance to reduce it and you missed it.

The committee adjourned at 12:27 p.m.

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No. J-11

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Wednesday, December 1, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 1, 1982

The committee met at 10:10 a.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

Mr. Chairman: Gentlemen, having a quorum in place we will start. We will start with the first vote, and the Attorney General has an opening statement.

On vote 1401, law officer of the crown program:

Hon. Mr. McMurtry: Thank you. Mr. Chairman, colleagues and ladies and gentlemen, I am pleased to be back again before the committee for discussion of our ministry's estimates. This is the seventh occasion on which I have had the opportunity to present the estimates of the Ministry of the Attorney General. It is a process that I do truly look forward to as it gives us an opportunity for scrutiny, reflection and discussion that is often lacking in the relative hurly-burly of our day-to-day political life.

Looking around this room reminds me of the many colleagues who have participated in this review process over the years, particularly those who have left the Legislature: Jim Bullbrook, Margaret Campbell and Patrick Lawlor come to mind.

This year's estimates will be the last time one very familiar face will be seen here. I am sure honourable members know that the Deputy Attorney General, Rendall Dick, will shortly leave the province's public service to join the Law Society of Upper Canada as the under-treasurer.

Rendall's career has been quite exemplary and extraordinary. He joined the ministry upon his call to the bar, working at a variety of assignments until he was asked to join the Department of Highways. In 1963 he returned to the ministry and in 1964 was appointed Deputy Attorney General, leading the ministry through a major period of transition and growth.

In 1971, following the report of the committee on government productivity and establishment of the Provincial Secretariat for Justice, he was the first Deputy Provincial Secretary. The years there set the tone for the operation of the secretariat to this day.

When I first encountered Rendall he was Deputy Treasurer, Deputy Minister of Economics, and Deputy Minister of Intergovernmental Affairs. He served there for seven years through the ebb and flow of the regional government policy, the anti-inflation program and the years' increasing challenge with respect to government expenditure and restraint.

For me it has been a very special pleasure to have had the benefit of Rendall's practical wisdom, unprecedented experience, legal scholarship and, equally important, great sense of humour, over the last 15 months. He has made a career of public service and the people of this province have benefited greatly by his professionalism, integrity and judgement. He faces new challenges over at the law society. I know I speak for all of us, Mr. Chairman, when I say that we wish him well.

Mr. Chairman, I hope we can use this committee time to stimulate discussion on basic principles and some of the broader issues. It was important for me, my officials and advisers to hear again something of our critics' broader views in relation to the administration of justice.

In these opening remarks I want to review, albeit briefly, a few of our major reforms and initiatives during my tenure, in a wide range of legislative and administrative matters, and to discuss a number of the key activities occupying our time and energies at present.

Finally I will attempt to provide members with at least a brief view of what we see as some of the major challenges facing the administration of justice in the future.

Probably the best known of our major legislative initiatives over the past seven years is the family law reform project. We took major steps to bring the law into greater harmony with the needs and values of contemporary Ontario, recognizing equality of men and women, the special needs of children and the nature of today's family life.

I do not intend to review the legislation, except to say that it appears to be working well. People across the province recognize how much fairer the new law is than the antiquated patchwork of laws it replaced. Slowly a body of jurisprudence is emerging that reveals the initial

problems have been ironed out. The family law reform statutes constitute a major achievement for Ontario, an achievement which has been recognized by the many other provinces which have shaped their own family laws after reviewing ours.

In April of this year I was proud to be present at the ceremonies in Ottawa when Her Majesty the Queen formally patriated the Canadian Constitution. It was a major landmark in our constitutional development.

For the last seven years a significant amount of our time has been devoted to the constitutional discussions. The achievements are obvious. Patriation with an acceptable amending formula has enabled us to have control of our own future constitutional destiny. The Charter of Rights and Freedoms will have a major impact upon our legal system. It presents challenges to the legal profession, the judiciary and the government.

Yet the accord of November 5, and the resulting Constitution Act 1982 do not represent the conclusion of the process. A few weeks ago, Mark MacGuigan, the federal Minister of Justice, stated that the promise made to the Quebec people before the referendum—namely, a promise of renewed federalism—had been kept. We all appreciate that is not the perception of many people who reside in the province of Quebec.

Much more needs to be done to open up a constitutional dialogue with Quebec, as well as re-examining the elements and institutions of our Confederation. More needs to be done for the renewal of the Senate and some of the other central institutions of the nation. The vital question of the rights of our native people has been given a major priority.

The senior staff of the ministry have worked tirelessly with me in the constitutional negotiations. The process was protracted, difficult and perhaps even hazardous at times, but in the end I believe the achievement justified the effort.

At a yet more basic, everyday level, ministry staff have been engaged in a massive effort to simplify justice for those charged with minor offences. An enormously important reform of law and procedure is represented in the Provincial Offences Act and the Provincial Courts Amendment Act. This legislation followed a period of public consultation and discussion and took effect on March 31, 1979.

Members may recall that reform as an effort to overhaul the traditional method and process for dealing with more than three million provin-

cial offences each year; a staggering case load to deal with under the traditional format. We replaced it with a procedure that is straightforward, fair, more convenient and accessible. Our public information program used the slogan "simple justice" to highlight features of the new system which members will realize is where the largest number of Ontario residents come into contact with the justice system.

We believe the transition to the new system has been relatively smooth, in large part because we took the time and expense to educate police officers and court staff, as well as the general public, as to how it would work. Further reforms in this system are still to happen as we proclaim the sections under part II of the Provincial Offences Act. This is the part that covers the processing of parking tickets which, at the rate of more than two million per year, represent an enormous burden to the court system.

Our system, together with the plate-to-owner program of the Ministry of Transportation and Communications, will mean that motorists who choose to ignore parking tickets and other legal notices received after the infraction will no longer be able to escape detection, often for more than a year.

Before validating their vehicle registration each year, all motorists will have to make certain they have cleared up any outstanding parking fines. This system will go into operation next year and I am told it will enable us to collect an additional \$3 million a year for local governments. In addition, it is projected that it will save them at least another \$3 million in staff costs, particularly in their police departments, allowing better use of these highly trained personnel.

10:20 a.m.

Another major effort of law reform will shortly be brought before the assembly. I refer to the courts of justice bill and the new rules of civil procedure for the Supreme Court and district courts.

In the months immediately after my appointment in 1975, I discussed ways in which our civil procedure could be modernized and streamlined. I asked the late Walter Williston, QC, who as you know had an extraordinary grasp of the subtleties of litigation, to chair the civil procedure revision committee. It was the first time we had looked at the subject intensively since before the First World War.

I asked Mr. Williston's group to simplify and expedite the litigation process and to modernize the structure and language of the rules of

practice. So began a major project of research, consultation, and discussion with interested parties in virtually every part of Ontario.

His report was received in the spring of 1980, just before his untimely death. It was, indeed, a major accomplishment. All who practise in our civil courts will find their future work shaped by Walter Williston's vision of reform.

A subcommittee of the rules committee chaired by Mr. Justice John Morden has been reviewing the Williston report and preparing the new rules of practice. Ministry staff have, of course, been working closely with this group. I hope the committee's work will be completed in the next few months, if not sooner.

The new rules contain major changes, including expanded rights of discovery and expanded jurisdiction for local judges in Supreme Court matters. Many new provisions are intended to expedite civil proceedings and promote the settlement of actions without a full trial.

I am looking forward to the early implementation of this major work of procedural reform. I shall soon be bringing before the Legislature a Courts of Justice Act which will provide the legislative base for these reforms. It will modernize and consolidate a number of statutes dealing with the administration of justice including the Judicature Act, the County Courts Act and County Judges Act, and the Provincial Courts Act. It will also contain our responses to the Gale report, the Greene report, the Kelly report and the report of the committee on tort compensation.

Like the family law reforms and the provincial offences reforms, the passage by the Legislature of the Occupiers' Liability Act and the Trespass to Property Act have had a major impact on the life of this province. These acts took effect on September 8, 1980, after a period of intense public consultation and debate. Following proclamation there was a public information and education campaign which included newspaper and magazine advertisements, posters, an educational film for use in schools, pamphlets and booklets. This material continues to be in circulation in response to public requests.

In addition, the ministry designed and had manufactured the signs many property owners have chosen to use to control access to their property. Once private industry geared up to supply the demand for the signs, the ministry withdrew from production.

This area of law was changed to solve two major problems. The first was that the old law as

it evolved through court decisions had become out of date and too complex to be understood by the public. The second reason was that the old law discouraged owners and occupiers of rural land from permitting recreational activities on their property because they feared being sued by persons who might injure themselves. The new law overcame these problems.

As I said at the time, these acts represented the most substantial and far-reaching reform of this area of the law since the Petty Trespass Act was enacted in 1834. Like the family law and provincial offences reforms, this represented major change in laws and procedures that people come into contact with on a daily basis. In each of these reforms there was a substantial process of public debate as the policy and legislation was formulated, drafted and passed.

In each reform there was, from my ministry at least, a substantial public education campaign after the legislation took effect. Since then we have continued the public education and information effort by making certain the various materials are always available to the public in a convenient and understandable format.

I think, Mr. Chairman, that the process of public participation in law reform from the outset and then public education in the new laws once passed is one reason substantial reforms such as these have been put in place relatively smoothly.

I would now like to turn to the question of French language services within the courts system. First let me bring the committee up to date on this program, which we started literally from nowhere seven years ago and which has now blossomed into a service of which I am most proud, both as Attorney General and personally.

For Criminal Code offences as well as for other federal offences the code guarantees the right of citizens to be heard before the courts in French. This right exists throughout the province without exception and applies to all levels of courts.

If a person's trial is to be held in a part of the province where the necessary bilingual personnel are not available, such personnel will be brought to that area for the trial. If the accused is to be tried in an area without sufficient bilingual population and has elected trial with jury, the trial will be moved to an area where the necessary jurors are available. There is no additional expense to the accused for this service.

For all other matters such as civil actions,

family law, small claims and provincial offences, French language legal services are available in 12 officially-designated districts and counties. The designated districts are: Algoma, Cochrane, Essex, Niagara South, Nipissing, Ottawa-Carleton, Prescott-Russell, Renfrew, Stormont-Dundas-Glengarry, Sudbury, Timiskaming and York. Within these districts and counties the services are provided at all levels of courts and are guaranteed in law by section 130 of the Ontario Judicature Act.

The 12 districts and counties were designated in the interest of providing the best service to the greatest number of francophone citizens, at the same time as ensuring the most efficient use of current resources. In these districts and counties, in which 83 per cent of the francophone population of Ontario live, all levels of courts have the capacity to operate in the bilingual format. The services offered in these districts are of a very high quality and will be extended to more areas as more resources become available.

In addition to the courts, two administrative tribunals, the Assessment Review Court and the Criminal Injuries Compensation Board, provide French language services. Upon request to either of these tribunals, citizens may be accorded a hearing before bilingual commissioners, thus permitting them to address the board directly in French.

The public trustee and the official guardian are developing a capacity to function in French, and are in the process of translating their forms and documentation. Citizens may currently make inquiries to either of these offices by communicating directly in French. Besides these services, a large number of court forms are in a bilingual format and we are continuing to translate the most common of Ontario statutes.

Promoting access to justice has been one of our major priorities over the past seven years. I am pleased that we have made major strides to make the small claims court more accessible to the public it serves.

During the past seven years we have increased the number of full-time, provincially-appointed small claims court judges from three to 11. Five years ago, we increased the monetary jurisdiction of small claims courts across Ontario to \$1,000. This step, more than any other, has had the effect of opening the courts to a broad variety of small claimants.

As members are aware, three years ago we established a special pilot project in Metropolitan Toronto, the provincial court (civil divi-

sion). The court operates with procedures and rules adapted for the project by a special advisory committee.

I am delighted to be able to inform you that the court has proved extremely successful in Toronto. We hope to make it permanent in Toronto and would like to be able to extend the project to other selected areas of the province.

Finally, I am pleased that we have been able to expand the system of pre-trial settlement. Small claims court referees now hold resolution hearings aimed at reaching a settlement where possible, or at any rate narrowing the issues in dispute. In addition, the referees handle judgement summons hearings and other debt-enforcement proceedings, making a recommendation to the judge in each case.

I believe that the expansion of the referee system offers a very real hope of removing at least some of the cases from the regular litigation stream and handling them more expeditiously and with less formality. Taken together, these initiatives are proving very successful.

One of the most challenging aspects of this portfolio is the scope it offers to deal with the relations among people of different races. I am convinced that the issues involved in race relations must be aired publicly and faced in a forthright and open manner. Unfortunately, we have had and continue to have racially motivated violence in Ontario. We have seen racist groups obtain vast amounts of publicity but, fortunately, few adherents in recent years. We know that the greatest single ground of discrimination, after 30 years of being illegal in this province, is still race.

We also know that there is a vast reservoir of goodwill and openness in the people of Ontario. We are certainly not a province of racists. Instead, we have proven to be the willing hosts of one of the most daring, vibrant and successful experiments in culture-sharing the world has ever seen.

10:30 a.m.

To maintain that success it is necessary to acknowledge the existence of pockets of deliberate racism in Ontario and thereby mobilize the goodwill of the majority against the malevolence of this small minority. It is also necessary to draw attention to the kind of unthinking and unintentional racism which is among us in order that it too can be recognized and eliminated. Accordingly my ministry has deliberately maintained a clear focus on the issues of racism, racial discrimination and race relations.

As Attorney General, I chair the cabinet

committee on race relations, which was established on my recommendation in 1979 to give focus to and help co-ordinate activities of different ministries and agencies in the field of race relations.

As an example, the committee established the task force on the portrayal of racial diversity in government advertising and communications. The task force recommended that printed and broadcast advertising and communications by the government and its agencies properly reflect the racial diversity of the people of Ontario. The policy was approved by cabinet and is now binding on all ministries, agencies, boards and commissions. While this is an important step in helping to eliminate stereotypes, its real impact will be felt when advertising and other communications from the private sector follow the government's lead in this regard.

In addition to work on that project, staff of my ministry have also been active in providing a criminal justice advice service for victims of racially-motivated offences, in monitoring hate literature, and in participating in the Metropolitan Toronto Committee on Race Relations and Policing. The committee, established in 1976 and co-funded by my ministry since 1979, serves as a link between the police and visible minorities. In four areas it operates neighbourhood committees at which police officers and community members can meet to discuss local concerns and needs.

I would be pleased to discuss these and other race-relation activities in detail, as well as our basic belief that we need to acknowledge the legitimacy of diversity to unleash the creative energy and force needed to build a strong and united nation.

As you know, legislation establishing the Metropolitan police force complaints project took effect in December 1981. This project is now being administered by the Ministry of the Attorney General. Requests for such legislation came from municipalities, community organizations, the media, opposition parties and police organizations, among others.

I am pleased to report that this legislation and the present operations of the commission satisfy the majority of concerns expressed. There is now in place a formalized system of dealing with public complaints against the police with a greater civilian component in the complaints process and, in turn, a window on the policing world.

As I stated on the establishment of the commission in the fall of 1981: "We have

designed a process which completely opens the civilian complaints system to public review, which requires the police force to respond properly and effectively to complaints of misconduct, and which installs and creates independent civilians as the ultimate arbiters of acceptable police conduct. Yet it still places on the members of the police force the basic responsibility to police themselves on a day to day basis, a responsibility which is consistent with the task delegated to them by our society.

"I would suggest that if we turn every complaint into an adversarial process between the police force and the individual, then we will only institutionalize confrontation when mediation and conciliation would often be more appropriate and certainly more in the public interest.

"I suggest at the outset that the philosophy of this bill is consistent with every major report or study done in Canada and elsewhere with respect to the processing of civilian complaints against the police. . . all recommending that the police should have the initial opportunity to resolve complaints."

The public complaints commission experienced early and consistent success in dealing with various interest groups. This success story provides an important bridge in resolving emerging issues.

I have recently made available the interim report of the commissioner for the five-month period leading up to proclamation of the legislation, so I do not propose to go into this in detail. I want to say that I am delighted that a man of Sidney Linden's ability and reputation continues to serve the people of this city with dedication and conviction. In addition, we have been fortunate in having as members of the commission and advisers to Mr. Linden a group of citizens who are concerned and knowledgeable and reflect the diversity of the Metropolitan area.

I think that one of the early successes of this project that we can point to is the fact that Mr. Linden and his staff have been able to mediate and resolve some of the disputes to the satisfaction of all persons involved. I draw the committee's attention to Mr. Linden's concluding remarks in the interim report and I quote:

"At this early stage I am happy to report that the new police complaints procedure appears to be working essentially as the legislators intended, giving the citizens of Metropolitan Toronto access to an effective and responsible police complaints system. I am encouraged by the

co-operation I have received from both the public and the police. I am confident that this procedure is capable of working and I look forward to submitting my first annual report."

As members know, one of my key concerns since becoming Attorney General is the problem of drinking and driving. As Solicitor General I encouraged police to try innovative enforcement programs, such as the RIDE—reduce impaired driving everywhere—effort in Metropolitan Toronto and in the purchase and use of portable breath analysis machines, as well as bringing in amendments to the Highway Traffic Act to enable police to remove drinking drivers from the roads for 12 hours.

As Attorney General I have issued directives to my crown attorneys to prosecute vigorously alcohol-related driving charges and to seek sentences that reflect the concerns of the public in this regard. I read on the weekend that the federal Minister of Justice also intends to make this issue a top priority of that government in the coming months and I certainly welcome his interest.

Recently I was asked by the Premier (Mr. Davis) to chair his new task force on drinking and driving, which consists of seven ministers. We have directed a group of our employees to examine ways various ministries can co-ordinate their efforts in this regard. The Premier's task force and staff will maintain close contact with the organizations of citizens concerned about this issue and we hope to have some useful recommendations in the near future.

For our part, the Ministry of the Attorney General will be launching next week its annual campaign against drinking driving during the Christmas and New Year holiday period. We will be using the same graphic advertisements and posters as last year, with the slogan "Feeling no pain" which won awards for creative excellence both here and in the United States.

As members can see from their briefing books, the area of the ministry which takes the largest share of our budget is the administration of courts. Without question the provision of adequate staff and facilities will continue to be a challenge, but I believe we have made considerable progress, notwithstanding the fact that this been throughout a period of government restraint.

I would like to cite briefly some figures. In 1976-77 we had 183 full-time crown attorneys. In the current fiscal year we have 266. That is an increase of 45.4 per cent. In 1976 we had 117 judges in the provincial court (criminal division). Today, we have 149. In the same period

the number of judges in the provincial court (family division) increased from 38 to 60.

In the past seven years we have provided 103 new courtrooms, through leasing or construction, in Pembroke, Barrie, Kitchener, Dryden, Toronto, Newmarket, Guelph, Welland, Sault Ste. Marie, Windsor, Hamilton and elsewhere at a cost in excess of \$50 million. In addition, the ministry annually undertakes approximately 20 major renovations or leases with an annual budget in excess of \$5 million.

As well, smaller projects to upgrade existing facilities have also been undertaken. Although the number of projects is determined by availability of funding, approximately 20 such projects are completed each year.

At the present time two major projects are in progress. The St. Catharines courthouse will open in 1983, with a total of 15 courtrooms at a cost in excess of \$15 million. Plans are presently being prepared for a consolidated courthouse and registry office in Ottawa. Tenders will be called in two stages during 1983 and completion is anticipated in 1985. This new courthouse will have a total of 35 courtrooms and the cost will be approximately \$50 million.

Preliminary studies are also under way for a new Metropolitan Toronto courthouse. Statistics indicate it will be required to handle the increasing case load in Metro. Long-term projections have also identified court requirements in Scarborough, North York, Etobicoke, Lindsay, Brockville, North Bay and as funds are made available, these projects will be undertaken.

10:40 a.m.

Many of the initiatives I have described in the statement so far are being undertaken by the policy development division of the ministry. They have a major task ahead of them in preparing for the introduction of the courts of justice act and the promulgation of the new revised set of rules of procedure. Other counsel in the division are working intensively on the new construction liens legislation, which is the topic of much discussion in the construction industry.

In addition, the recommendations of the professional organizations committee dealing with architecture, engineering and the legal profession are also currently under intensive scrutiny and should be the topic of bills before the Legislature in the not too distant future.

The division is continuing to monitor the family law reform initiatives and, in particular, the recently passed Children's Law Reform Act. In addition, the impending implementation of

the federal Young Offenders Act will require legislation at the provincial level for young people who commit provincial offences. We are also intensively involved in the cost-sharing negotiations with the federal government concerning young offenders.

Mr. Chairman, I could go on for a considerable period of time outlining the future initiatives we are considering in the policy area. I would be delighted to entertain any questions from the members of this committee concerning particular initiatives in which they are interested. The protracted set of constitutional negotiations I referred to earlier placed heavy demands on our small group of specialists in the constitutional law division.

Since the passage of the Constitution Act 1982 the division has co-ordinated a major systematic review of provincial statutes, regulations and programs to determine whether they conform to the Charter of Rights and Freedoms. A few do not. They will be dealt with in legislation in the next year or so. Others must await judicial decisions determining the precise ambit, meaning and impact of the charter.

In addition to this review, the charter has generated a considerable amount of litigation. In the first six months since the charter came into effect, notices that constitutional issues were being raised in litigation have doubled over that of the previous year. Many of these issues are raised in the context of criminal trials. The charter is only one of the challenges facing our criminal law division.

I believe that several of the matters opposition members of this committee want to deal with are in the area of criminal law. As I have indicated in the Legislature, I will deal with these issues to the fullest extent possible, considering that some matters are before the courts or under active investigation by the police. However, there are other issues which I believe to be of interest.

Our new Constitution and Charter of Rights have brought many pressures and challenges before the criminal justice system, which, like other parts of the system, is severely limited by the resources available to it.

My officials have played a key role in preparing the crown attorney system and other provinces with research material on the charter. There has been some criticism that a narrow, legalistic approach has been taken to interpreting and applying the new provisions, in effect negating some of them. I believe that criticism is simply unjustified and unwarranted. Criminal

law officers were simply preparing themselves for the proclamation of the Constitution and the criticism may stem from the fact that they have done their homework, unlike some members of the defence bar.

I want to mention briefly, also in the context of the criminal law section of the ministry, the question of organized crime, an issue that has received considerable media attention in recent years. We continue to prosecute an increasing number of offences which have been referred to as organized crime prosecutions. As a result of a police joint-forces approach to investigation in this area, charges have been laid against approximately 472 persons involved in organized criminal activities in the past five years. Among the charges are several involving complex conspiracies.

Of particular significance was the success in the past year in penetrating the innermost workings of an organized crime family in the Toronto area. As a result of the unit's success in "turning" an enforcer for organized crime towards co-operation with the law enforcement authorities, several key members of organized crime have been convicted within the past year of most serious offences, including conspiracy to commit murder, and have been sentenced to lengthy penitentiary terms.

Other cases involve breach of trust, bribery, extortion, kidnapping and counterfeiting, attempts to obstruct justice, theft, forgery, fraud and other criminal rackets. These prosecutions are the result of intensive investigation into patterns of criminal activity that are planned and organized by persons acting in concert.

Counsel in the crown law office are consulted by and advise members of the police task force at regular intervals in the course of every major investigation. Counsel have participated in intensive courses dealing with the prosecution of organized crime at Cornell University.

In addition, we have continued to prosecute an increasing number of complicated commercial transactions involving allegations of fraud, corruption and conspiracy. These prosecutions are complex and take a large amount of preparation and trial time. Liaison with the police is an important feature of these activities in order to provide the specialized prosecutorial assistance needed, not only at trial level but also from the outset of the investigation, in most cases.

Turning to another issue, Mr. Chairman, that of legal aid, I would like to state that since becoming Attorney General I have considered

my responsibility for ensuring that legal aid services are efficiently and effectively provided as one of the most vital aspects of my office. I am saddened to say that only rarely have I found that point of view shared widely in this building or indeed in the community at large. As economic times become harder for many Ontario residents, I think all of us in public life have an obligation to strive to create a stronger base of support for the Ontario legal aid plan.

I believe that if more of us undertook to discharge that obligation, we could considerably strengthen the plan. Much of the opposition to legal aid is based on misconceptions about it, coupled with lack of appreciation as to the fundamental importance of legal aid in the preservation of the rule of law, and with it the basis upon which the liberty of every Ontario resident is built.

Unfortunately, some of the criticism of legal aid is simply based upon naked self-interest. Some people, having achieved positions of power, take umbrage at the very thought of the legality of their actions being challenged.

Some governments—not including the one of which I am a part, I hasten to add—have similarly attempted to isolate themselves from effective challenges on the part of the poor, by cutting back the access of the poor to legal services. We have seen this take place to the south of us, in a process vividly described by Maryland Attorney General Stephen Sachs as follows, and I quote:

"To cripple or destroy programs which feed and house and educate and heal the nation's poor is bad enough. But this administration, by seeking to ration justice as well, would strip its critics of the means to fight back. The tactic is familiar—and terribly unfair. In sporting arenas it is called 'hitting and holding.' On the streets it is called mugging."

The government of which I am part has never been, and will never be, susceptible to that kind of criticism. Nor will we respond to the urgings of those who wish to strip their opponents of the means to assert legal rights. But these economic times call for far more than merely holding the status quo against the opponents of legal aid; they call for the courage to dedicate a significant increase in resources to the legal aid plan.

Those of us who spend our lives working with laws often forget what a bewildering, and often intimidating, patchwork that legal rules form. Moreover, we may also forget that achieving the passage of a law is quite a different thing from ensuring its effective and equal application.

Laws govern vital aspects of the lives of every resident of this province; to deny any citizen access to legal services is to reduce citizens to subjects, and to entrench inequality in its most fundamental—and unjust—sense.

When those of us in this building pass laws we do so on behalf of, and for the benefit of, all residents of Ontario. If the will of the Legislature is not to be thwarted, we must ensure that all residents have the capacity to be made aware of those laws, to understand their rights and obligations, and to enforce that which the laws grant to them as rights.

If we accept this as our obligation, then we have no better allies than the community legal aid clinics. These clinics, of which there are now 40, have grown five-fold since I became Attorney General. But there are still not enough clinics, nor are all the existing clinics adequately staffed. There also remain significant differences in the remuneration paid to clinic lawyers and that paid to lawyers in the public service.

I would like to add significantly to the resources available to clinics. The province needs more clinics with more and better-paid workers. These needs exist because the clinics are in a position to take the law to those who need it most. It is almost trite to point out that a great many poor people have never been made aware of the rights they enjoy under our laws.

10:50 a.m.

For those who are aware there remain the large physical and psychological barriers between them and the average practitioners. If those barriers are overcome, there remains the fact that the vast majority of lawyers are not trained to deal with poor people's problems—welfare claims, unemployment insurance, landlord and tenant matters and the like.

The clinics located in and run by local communities can reach out to advise people of their rights. They take the law to the people and then bring the people's rights before courts and tribunals for adjudication. When necessary, they approach those of us in the Legislature to seek the legislative amelioration of difficulties caused by the operation of some of our laws.

In doing all of this, the clinics help convince the poor that they have a stake in this society and that their grievances can be listened to and can be made heard. Those who oppose clinics should consider the enormous social consequences and costs which could result if a significant segment of our society felt themselves isolated from any legal redress of their grievances. As Anthony Lewis, the well-known

New York Times columnist, recently wrote, "We desperately need, nowadays, to make people at the bottom of society feel included in it, feel that they have some access to the system."

I share those sentiments, but I would add to them the view that we have an equally important need to expand the public's awareness of the critical importance of the rule of law. I have frequently reflected on the rule of law in speeches I have made as Attorney General. I will not take this committee's time to review that basic concept, except to briefly state the essence of the elusive concept.

At its most basic, the rule of law means that no person is above the law and that all persons are governed by objectively determinable laws, rather than by the subjective whims of individuals. It is the rule of law which separates freedom from enslavement, democracy from tyranny. The rule of law can only survive if it is cherished and enforced by all members of society. Legal aid brings the rule of law to a substantial segment of society, and in so doing strengthens considerably its base of support. That strengthening of the base of support for the rule of law strengthens the liberty of us all.

In this regard, I would like to turn briefly to a much-maligned part of the legal aid plan, that which provides legal assistance to indigents charged with criminal offences. Let me emphasize the words I have just spoken. I underline "charged with a criminal offence." Far too many people speak of legal aid being given to criminals. Such loose talk is an affront to the presumption of innocence, which surely is a pillar of freedom in this society.

Although all facets of legal aid contribute to the attainment of the great goal of equality under law, criminal legal aid has an added significance. Without exaggeration it can be said that a state's dedication to preserving the rights of all its members can be measured by the zealotry with which it protects the fundamental dignities and basic freedoms of persons accused of breaking its laws. I was looking last night unsuccessfully for a quote in which almost those precise words were often used by the late Winston Churchill to that effect when he said the hallmark of any civilization would be the manner in which it treats accused persons before the courts.

Since the ultimate independent guarantee of the rights of accused persons is the provision of vigorous, skilled and effective defence services, support for criminal legal aid is a powerful

inducement of a state's commitment to the rule of law. It cannot be said too often that the right to counsel is not a right which simply advances the interests of an accused person, but rather is a right which is essential to the maintenance of respect for the rule of law. Only if the residents of this province are satisfied that innocent persons will not be convicted by our courts, will the processes and results of the administration of justice be assured of the respect they require for their effectiveness.

It follows that the provision of a vigorous and skilled defence benefits society as much as it does an individual accused. Use of the power of the state against an isolated individual can only be justified if established legal procedures are strictly adhered to. Only the unquestionable availability of able defence counsel provides an independent guarantee to society that the state's power is being wielded fairly and accurately.

It is that guarantee which promotes public support for the rule of law. Those persons who express concern about the increasing cost of providing criminal legal aid services should reflect upon the enormous law enforcement savings which accrue from the rule of law being widely respected. Indeed, I am convinced that all aspects of legal aid, civil and criminal, certificate and clinic, produce considerable cost savings for the public.

I have alluded earlier to the social costs which could result if a substantial segment of society felt it no longer had a stake in or derived any benefits from the existing system. Less dramatically and more immediately, the public should consider the great costs saved when timely legal advice avoids litigation, produces settlements or simply narrows the issues which must be fought out.

Where litigation is undertaken, it is undeniable that the time demands placed on the system by the undefended litigants are enormous. Both opposing counsel and the presiding judge assume an obligation to the unrepresented litigant which virtually ensures that most trials will be greatly prolonged.

In difficult economic times high-profile programs with low levels of articulated support are vulnerable. The pressure on government resources is real, is enormous and is painful. Tough decisions have to be made, important needed projects have to be forgone, but legal aid as a critical component of our social fabric must be strengthened, not cut.

In this, legal aid has much in common with the Ministry of the Attorney General itself. As

economic times get harder and economic pressures on individuals increase, the entire justice system takes on an extra load. In hard economic times our needs go up. More hardship means more pressures on families, more divorces, more children before the courts, more domestic and other violence, more economic crime, more need for legal advice on social assistance programs, more contested rent review applications, more discrimination against the handicapped—in short, a lot more business for the justice system.

In the final portion of my remarks this morning, I would like to outline very briefly several of the current issues facing the administration of justice and some of the future challenges we are currently exploring. The topics I shall deal with are ones which I believe increasingly occupy our attention during the coming years. I hasten to assure you that I do not believe that time allows, by any means, an exhaustive list of the many challenges, but simply several of the more important challenges.

The first issue, again, concerns access to justice. I have been concerned for some time that the bulk of the population may simply be unable to afford to bring civil disputes before the courts. Legal aid works for those below its threshold of eligibility. However, for the bulk of the population it does not constitute a realistic source of funds to underwrite civil litigation. Moreover, the services of the bar are becoming increasingly expensive. I remember hearing the Prime Minister, 15 years ago when he was still Minister of Justice, expressing concern that the legal profession was pricing its services far beyond the reach of the ordinary man in the street. The situation has not changed markedly since then.

We are taking what steps we can within the system to make it more efficient. Some of the Williston reforms will expedite and simplify civil litigation. Within the court system, we have over the years been developing management standards and procedures which will lead, we believe, to better case flow management. However, beyond these internal modifications I believe that we should be looking very seriously at alternative dispute resolution.

I mentioned earlier in these remarks the success we have been having with the small claims court and, in particular, the provincial court (civil division) in Toronto. Many people appear in these courts without a lawyer, conducting their cases without the formality and

technical apparatus traditionally associated with our court system.

We are monitoring these developments very closely. In addition, we are also following with great interest an experiment currently taking place in Windsor.

11 a.m.

Two weeks ago I visited Windsor and had the opportunity to meet with some of the staff of the Windsor-Essex Mediation Centre. This is a unique project in Canada, which attempts to resolve a broad range of noncriminal disputes through the use of trained, volunteer mediators. The centre is a three-year pilot project of the Canadian Bar Foundation and has received enthusiastic support from the Windsor community. It has been very successful in achieving settlement of minor civil disputes without the necessity of protracted litigation.

Recently, the Windsor-Essex Mediation Centre has entered into a closer working relationship with the small claims court there. Small claims court claimants will now be offered the choice of taking their claim to court or, if both parties consent, to mediation. This, in my view, is an exciting development. It will enable a number of cases to be handled more expeditiously and efficiently than before. If the record of the Windsor centre holds up, I believe that it will offer us a new and very important alternative to the court system in the 1980s.

Likewise, conciliation is being used increasingly in the family courts. I believe the legal profession has nothing to fear from the growth of conciliation and mediation and that, approached in a co-operative fashion, mediators and conciliators have much to offer both society and the court system.

I made reference earlier to the complexity of some matters being brought before the criminal courts. The increasing number of lengthy trials is one result. Of particular concern also is the growing tendency of preliminary hearings to last several weeks and even months. There are no easy answers to this problem, but I would recommend to interested members the report in May of the special committee on preliminary hearings under the chairmanship of the Honourable Mr. Justice Arthur Martin.

If we are to make our criminal trial process more efficient for all, I believe we have also to re-examine critically some of the fundamental elements of our system. At the same time, I want to make it clear at the outset that I am totally opposed to any attempt to erode the basic rights of an accused in a criminal trial. However, this

does not mean that we should not think very carefully about what the precise content of those rights may be.

Take the right to counsel, for example. It is guaranteed, as it should be and must be, in the Charter of Rights and Freedoms, but what does this mean? In Ontario the right to counsel generally means a right to a specific counsel of one's choice. The result is that if that particular counsel of choice is booked up for the next 10 months, or a year and a half, everything stops for that period of time so far as other cases involving that counsel are concerned. That is not the English system, nor is it the system in Quebec, for example.

For some time, I have been wondering whether we should not be considering a system where an accused has a right to a counsel of choice who is available within a reasonable period. Should the defence bar not have partners or associates covering for them as their colleagues in civil litigation do?

Recently, the courts have shown an increased willingness to look at this issue. They have also started to take a tougher stance towards counsel who engage in double booking. Let me mention, as an example, two recent cases.

One is the case of Regina and Taylor, a decision of Mr. Justice Eberle. The accused requested an adjournment for two months on the basis that her lawyer was not available until then. She suggested that by having a right to choose a certain lawyer as her counsel, if her counsel was available for trial only on a particular date, the court had no jurisdiction to set any other date for trial than that particular date. Mr. Justice Eberle thought that view was entirely unsupportable.

He said: "The right to counsel of the accused's choice does not carry with it the right to dictate the date for trial. The right to counsel of the accused's choice, in my opinion, means counsel of the accused's choice who is able to appear on the date which has been set for trial."

Obviously the case might have been decided differently if the counsel's delay had occurred only at the last minute, but in Taylor's case, the lawyer had a month to make alternative arrangements and failed to do so.

A recent decision of County Court Judge Stephen Borins was strongly critical of the behaviour of a particular counsel and the practice of double booking in general. He held that the lawyer's actions constituted "a direct interference with the administration of justice and

deliberate conduct likely to impede the administration of justice."

We in the ministry are monitoring these developments closely. We believe that much can be done, in co-operation with the private bar, to develop standards of behaviour which will result in accused being satisfactorily represented and the trial process expedited at the same time. Of course, as we all know, the Charter of Rights and Freedoms states that the trial of an accused must proceed within a reasonable time.

The last item I would like to discuss this morning is a very important and sensitive one. I refer to the question of whether an accused individual acquitted at a trial, or discharged at a preliminary hearing, should be compensated by the state for their legal expenses, and perhaps for other expenses incurred as a result of the trial or preliminary hearing.

This subject was raised most recently by the discharge of Miss Susan Nelles after a lengthy preliminary hearing. I have no wish to discuss her case, particularly in view of the fact there are civil cases pending concerning compensation. What I would like to do, however, is to briefly discuss some of the very difficult issues of principle that have been raised.

In the near future I hope to table a discussion paper in the Legislative Assembly setting out in more detail the options available to the province if it wishes to institute a mechanism for compensating those acquitted or discharged. The challenge will be to devise a scheme that is fair and workable. It would be completely unacceptable if we were to set up a scheme which had the effect of introducing middle verdicts of "not quite innocent" into Canadian law for those who had persuaded the jury there was a reasonable doubt about their guilt, but who nevertheless had not persuaded the jury that they were sufficiently innocent as to merit compensation.

I am discussing some of these issues, because I had hoped this discussion paper might have been available prior to estimates. This does not appear likely, but since I wanted to stimulate some discussion during these estimates, I thought it would be helpful if I were to outline some of the issues that will form part of this discussion paper.

I want also to make it clear that I would not want a compensation scheme to distort the fundamental balance of the criminal trial. I am not speaking solely of the interests of the crown. I think an ill-designed compensation scheme

might also be grossly unfair to the accused. Let me give you two examples.

We hold the right against self-incrimination very highly. No accused should be compelled to testify in his own defence. However, in some jurisdictions which have compensation schemes, the accused must testify, because he is unlikely to receive compensation without an affirmative defence. I have no wish indirectly to force the accused to testify.

Second, introducing questions of compensation may make it difficult for a jury to weigh the question of the guilt of an accused as scrupulously as juries now do. Would a jury be more likely to convict, in a borderline case, if it felt outraged by the fact the accused would not merely go free, but would be compensated? The experience of other jurisdictions leads me to believe we have to consider this as a serious possibility.

Let me speak for a little bit about the options we are considering. The question of compensation for acquitted accused has been canvassed in a number of commission reports across Canada. To date, however, no jurisdiction has implemented any scheme.

There are six basic alternatives which have to be considered. The first is a formalized system of *ex gratia* payments. This was the suggestion of Chief Justice McRuer in his civil rights report. He suggested having a panel of Supreme Court Justices to advise the cabinet about *ex gratia* payments to meritorious acquitted accused.

The second and third alternatives give the judge power to make a compensation or costs award following the conclusion of the trial or preliminary hearing. Some jurisdictions give the judge a virtually unfettered discretion; this is the second alternative.

The third alternative is for the Legislature to lay down rigid and formal guidelines to assist the judge in determining whether an individual ought to receive compensation. The major problem with formal guidelines is that they complicate the judge's consideration of the facts of the case as it is proceeding. The judge must not simply focus on the guilt, or otherwise, of the accused, but weigh in his mind a whole series of other factors relevant only to the compensation question. The experience of other jurisdictions with heavily structured guidelines is that few awards, if any, are made.

The fourth alternative is to set up a broad-based compensation scheme administered by a tribunal. I suppose the nearest analogy would be the Criminal Injuries Compensation Board.

Upon presentation of a certificate of acquittal or discharge, an individual would be entitled to make application for an award to cover his expenses incurred as a result of his defence.

11:10 a.m.

The fifth alternative suggested in one minority report in British Columbia is an expansion of legal aid, to cover retroactively acquitted accused, even though they might not, initially, have met the eligibility guidelines. I have some very real concerns about this alternative.

The final alternative we are considering is making changes to our tort law to facilitate the bringing of civil law actions for both costs and damages. This has the advantage of enabling the civil courts to analyse the issues separately from the process of the criminal trial, and also to be able to articulate guidelines for law enforcement authorities.

We are reviewing all of these options in considerable detail, analysing the experience of other jurisdictions, and attempting to determine what the likely cost of such a scheme would be to the taxpayer. I am looking forward to tabling the discussion paper in the not too distant future and to discussing these matters at length with my colleagues in the assembly. I hope these preliminary comments will encourage some debate and some advice during the process of these estimates.

I have attempted to highlight some of these issues—not all of the issues with which the Ministry of the Attorney General is concerned, by any means—in order to assist the members of the committee to better appreciate our priorities. I look forward to further discussion in all of these areas.

Mr. Breithaupt: Thank you, Mr. Chairman. It is my privilege again to attend the estimates of the Attorney General as critic for the Liberal Party. I am pleased to have heard a number of the comments made by the Attorney General in his opening remarks. I thought from the cover of his remarks that we had a 1,000-hour speech, but fortunately that did not quite work out and we managed to deal with a great variety of subjects in an hour.

I should start by commending Rendall Dick for the service he has given to Ontario. The loss to the province after a particularly involved career will clearly be a gain to the Law Society of Upper Canada, of which some of us are members.

Over the years I have known him in his various positions and ministries, Mr. Dick has

been a paragon of what one would hope to expect from every public servant. His involvement in a great variety of aspects of this administration, particularly in the senior legal positions which he has graced, has been of great benefit to the people of Ontario. We all wish him well in his new position.

Last year I used the opportunity of the estimates to reflect upon the nature of the justice system in our province and upon the importance of that system for the life and character of our community. In those remarks I referred to the system of justice as, "The highest manifestation of the ideals of the democratic society in which we live," and that "the principle of the rule of law was the bedrock of our society."

To underscore that point, the Attorney General himself coincidentally referred to the system of justice as "the bedrock of our democracy." That point can never be underscored enough. That was repeated with some strong meaning by the Attorney General today. It always needs to be repeated. Sometimes, unfortunately, we lose sight of this fact and it no longer seems to be as urgent. The common reasons for our endeavours become lost in the din and the rhetoric of the manner in which we operate.

Indeed, how many opportunities for real joint and constructive contribution do we forfeit because of the distraction of the political battle in which we are all engaged? There is a great irony in this. As politicians, we speak incessantly, almost in paranoia, for the record, making it thick with our wisdom. One wonders who really hears what we have to say. Many people in the province have long since tuned us out, disappointed with our noise and with the similarity of it all. So, as we become confused in battle, we interchange methods for purposes.

My thoughts this year are drawn to two fundamental issues which in my view merit the attention of the committee: compassion and confidence.

First, compassion. The discussions we conduct this year must relate to the harm wrought upon the people of this province by the economic disaster that has been 1982. The harsh, unrelenting winds of economic recession have sown seeds of suspicion and distrust for traditional institutions. We are seeing the harvest of this bitter crop in the justice system. We must be prepared and capable of coping in accordance with the highest standards of fairness and com-

passion which our society can demonstrate if it is to remain a decent society.

In August of this year Statistics Canada warned that a property crime is committed every 18 seconds in this country. We will all become the victims of this kind of situation. The Solicitor General of this province stated, and it was confirmed by law enforcement officials across the country, that economic conditions and high unemployment were the biggest factors contributing to the crime rate.

This observation should come as no surprise to us. Yet, given these harrowing figures, how does the system maintain the precious though precarious balance between compassion and efficiency? I appreciate some of the comments the Attorney General has made today on that particular theme. I am sure other members of the committee will want to discuss it more fully.

As for confidence, the strength of our laws, our judicial institutions and our law enforcement agencies all depend to a great extent upon the respect which they engender on the part of citizens whom they serve. This past year we have witnessed confidence in the Ontario system of the administration of justice somewhat undermined by a series of disturbing revelations made in the courts and the press. I say this more out of sorrow than in anger.

Unfortunately, we have repeatedly read or heard stories questioning the propriety of the conduct of various of our law officers. Names such as Proverbs, Nelles and Rosenberg have entered our lexicon as more than the mere surnames that they are. They have become code words. We have repeatedly read or heard stories questioning the administration and logistical ability of the system merely to process the volume of cases before it. The Chief Justice of the province has sounded this alarm. The case of Mark Allen Burns languishing in a Windsor jail for 10 months waiting for his turn in court has proved his point.

I am very worried by the implications of the matters being raised and by the frequency with which they are raised. The Attorney General knows that in articulating these concerns here, I am not merely trying to take part in the noise and distraction of a partisan battle. Along with him, I am striving for solutions. I believe all of us in the Legislature must strive for solutions.

We all agree that confidence in the integrity and in the ability of our justice system is essential. As confidence in this system falters, so also will falter confidence in the institutions and traditions of our society at large.

The issue of confidence and faith in the system has occupied the government's time this year as well. The Attorney General has forewarned of the possible ominous consequences of the political failure to commit the necessary funds and resources to the expanding needs of the justice field. These same fears have been eloquently expressed in the briefing notes on justice prepared for the Premier's policy conference last July. Let me refer briefly to a sampling of those fears.

"What should give rise to equal concern are the disturbing indications that an increasing number of citizens and citizen groups no longer believe that the justice system meets their expectations and are losing faith in the ability of our public institutions to cope successfully with crime and the criminal.

"In the light of this it is not surprising that many who work within the system believe that only a large injection of human and financial resources can bring the system back to a state of good health and prevent it from falling further behind in providing the level of service the public has come to expect and demand.

"In today's economic climate that is not likely to happen. It would be unrealistic to believe that the provision of more police, more prosecutors, more judges, more prisons will be forthcoming in the numbers which could possibly have an appreciable effect. It would be equally unrealistic to believe that somehow there will be a decrease in the demands upon the system.

"The challenge then which faces the justice field is simply that of coping successfully with an increasing range of problems at a time when there will be a decreasing pool of resources."

11:20 a.m.

These are the very candid views of persons in government charged with the responsibility of charting policy in the justice field. We must take heed of their observations. The anonymous author of that report goes on to point out certain disturbing trends with potentially great impact on the justice system. Two of these trends deal with the phenomena of youthful offenders and the privatization of law enforcement.

Of the former, he wrote: "The feeling of alienation on the part of our young people, lack of employment opportunities and an absence on the part of many young people of any consistent value system are only some of the factors which give rise to concern. The dropping out of the mainstream of society has the potential of creating a class of people who will not fulfil personal aspirations, but will also be a drain on

the rest of society...the 18-to-29-year age group...comprises, by far, the bulk of people dealt with by police, courts and corrections."

Of the latter trend, he observed: "There is a distinct possibility that as people lose faith in the ability of the established institutions in society to give them the protection they require, the vigilante concept in one way or another will be seized upon by those who are not fully aware of its dangers." Indeed, as the Attorney General is well aware, the Guardian Angels have already arrived on the streets of Ontario.

The concern with confidence therefore is not only an opposition preoccupation, but I believe the problem has been identified across party lines. That policy report concludes with a proposal to attack the prevailing attitudes.

The author writes this: "In order to restore faith in the system, which appears to be gradually eroding, attitudes on the part of the public and on the part of those who work within the system will need to be examined. For it is the behaviour and attitudes of the social control agents, police, prosecutors, justices of the peace and prison officials, which determine the public's faith and satisfaction in the system, and it is the behaviour and attitudes of the citizens which determine whether those agents can do their work effectively."

If the author is correct in his speculation, the task before all of us is a very difficult one. Indeed, the deliberations of this committee can be part of the process in the fulfilment of that task, which is not only to restore confidence, but to entrench compassion in our system. Towards this objective there are many specific issues which, in my view, warrant discussion by the committee. I realize that we'll deal with them in detail as we go through particular votes, but I would hope that we could at least highlight some of these themes and perhaps receive some further responses from the Attorney General following the comments which will be made by the opposition critics for this ministry.

First of all, I think we have to look seriously into the whole structure of the administration of the courts. The Attorney General has referred to that. He referred to the policy developments that will lead us to new statutes, a new courts of justice act and dealings with a variety of other aspects of the administration of justice.

I am pleased to see that the ministry is spending \$33 million more this year than last. I am pleased to see that this represents an increase of 18 per cent in spending this year over last. But I also believe that we have to put the expendi-

tures of this ministry into perspective. The total budget for the Attorney General as a percentage of the entire provincial budget is still less than one per cent. It is 0.96 per cent this year, as compared with 0.90 per cent last year.

I believe this is a woefully inadequate allocation to the Ministry of the Attorney General. It seems to me to reflect a low priority standing which this ministry apparently occupies at the cabinet level. Such a view, if that is the case, is a very short-sighted one. The long-term repercussions may indeed be disastrous.

In the Attorney General's comments, he referred at page 25 to the following aspect, where he says, "Our new Constitution and Charter of Rights and Freedoms have brought many pressures and challenges before the criminal justice system which, like other parts of the system, is severely limited by the resources available to it."

It's quite clear from the remarks the Attorney General made that he certainly is aware of the need for increased resources. He cites, and I believe with some proper pride, increases in the numbers of judges and the numbers of crown attorneys over the years during which he has had the responsibility of being the senior person of the government charged with the administration of justice.

I think he can openly and honestly take some credit for the increases which we have seen, not only in those areas, but also with the construction projects that are reported in St. Catharines and Ottawa and the others to which he referred. Of course, we all have to recognize the fact that there is much more which is going to have to be done, particularly as a reflection of the difficult economic times through which we are going.

Another point which certainly will be discussed during these estimates is the comments which have been made with respect to the propriety of police conduct, both alleged and real, as we have seen it in recent months. We will only be able to discuss in very general terms the situation with respect to the Nelles case in compensation, as the Attorney General referred to; or the Proverbs case so far as the involvement and attitude in some scenes of police discussions which have brought to our attention the views which might influence the kinds of investigations and the reports on which the entire court system must be able to rely if we are to have justice dispensed openly and evenly within the province.

We have called for a public inquiry in a variety of these aspects and we still believe that

would be a way to clear the air. I hope that consideration will not be entirely rejected in the months to come.

The Attorney General referred briefly to the matter of the Young Offenders Act. I think we have to look carefully at the impact which the proclamation of that act will have, particularly on the costs of the administration of justice.

We have been told that it is somewhat like the story of the Indian chief who was asked to describe what daylight saving time was all about. He cut off an end of his blanket and sewed it on the other end and said: "That's what we do. We move one end to the other, but we still wind up with the same blanket." In this instance, if we're going to be having additional costs, then we're going to have to meet those burdens, perhaps through funds from other ministries.

I am certain that the Minister of Community and Social Services (Mr. Drea) is going to be heavily involved in attempts to provide staffing and funding changes which are going to be coming in upon us as courts of a variety of different aspects are going to be dealing with these particular issues dealing with young offenders.

I was pleased this morning that the Attorney General referred to the whole theme of compensation of persons acquitted of criminal offences. Indeed, the latter pages of his comments have set out a pattern in dealing with the six themes, which is going to be most important for us to seriously consider. I, too, would have hoped we might have had that report before we dealt with these estimates, but at least we have had a statement of thought about the possibilities that might lead us to a system of compensation.

It is a most difficult concept. Even though it is one which the English authorities seem to have been able to fit into their traditional system that we follow, it is an area that is new to our way of thinking, although it may well flow from the Criminal Injuries Compensation Board and the concepts which began that aspect of dealing with persons in our society who have been injured.

11:30 a.m.

The matter of compensation is going to be one which, I am sure, will thoughtfully involve a lot of people. I look forward to seeing the kind of report that we are going to have. I would suggest to the Attorney General that when that report comes out, he might call a conference or meeting, to some depth, of people who are involved in that theme. The Legislature is a

good location. There will be, I am certain, many people, not only in the legal profession but law teachers and courts administrators and judges, who would be very anxious to share in serious, in-depth discussions on this whole concept.

It may be necessary to print whatever articles or studies that are available and distribute them fairly widely. What you are doing in bringing forward this theme is admitting that it is an area that must be resolved and which over the next few years is going to involve all of us. Many people will be interested in this whole concept. I hope there will be the opportunity for as full and wide a discussion as possible on this whole area to which the Attorney General has given much time in his comments to us this morning.

It is a very interesting thing to see the other aspect of the Attorney General's remarks, which have been the lengthiest part of his submission to the committee. That deals with the whole area of legal aid. I welcome the remarks and underscore my approval of the concepts the Attorney General has set out for us this morning. He has taken some eight pages of his 44 pages of comments on that theme alone. It really is to me quite amazing to read these comments and just to wonder at whom they are directed.

Recent reports have suggested, perhaps somewhat more extremely than is appropriate, that the system is collapsing under its own weight of trying to provide all sorts of services to everyone as may be possible within a very tight financial control.

I was interested in looking at the comments which the Attorney General made where he says that in supporting the legal aid services, and I quote: "I am saddened to have to say that only rarely have I found that point of view shared in this building or in the community at large." I am a bit at a loss to understand where in this building that concept has not been supported. It certainly is supported, so far as I am aware, in both the opposition parties.

If it is not supported at the cabinet level, where funds are otherwise decided upon, then I would certainly recommend that those six or eight pages be the subject of comments which the Attorney General might make in his own policy field to the cabinet or to his own caucus at large.

I really am concerned that he would feel the need to express himself in that way, because clearly there is a message that he is trying to get across. I can assure him that the message has been well received by the opposition parties. If the attitude requires further support in order to

receive the kind of strengthened point of view which is necessary for him to obtain the required funds to do the important job he sets out, then he certainly has my complete support.

The end result of the legal aid changes, as we see on page 25 in the briefing notes, is an increase of some \$3.5 million from the province as a contribution to the legal aid program. That cost will go from \$37 million in 1980-81 to \$40.5 million in the 1981-82 fiscal year.

There are serious questions in the legal aid program that have to be addressed. I am sure the manner in which certificates are granted or refused is a constant concern to the Attorney General and to those who are advising him. But, more important, the general issue of the inadequacy of the funding on behalf of lawyers who serve both the public and the system is something which has to be particularly addressed. We are well aware that there are many younger lawyers in the province who, because of a variety of other areas of practice that are not as prolific as they were, must rely more and more on legal aid certificates and the income they may bring.

I recognize it was probably never planned that someone would find his full income from the system, but I believe that is more and more the case, which may mean longer and thicker files than perhaps could otherwise be. It may mean, as well, expenses which are more readily added than was expected by the Attorney General when these funds are set. But there is a difficulty here. It is a difficulty in providing the services and in making sure that the provision of services for those charged with criminal offences is clearly accepted within our society.

In his remarks the Attorney General has been quite clear as to where he stands. He seems to be concerned that there are others in this building who do not support that way of approaching the problems and do not apparently recognize that unless the funds are provided in this area we will be paying many millions of dollars more as we deal with the patching up of the failure to resolve problems when they could be resolved at an earlier stage.

I welcome the comments the Attorney General has made concerning the legal aid approach. Certainly, the comments are quite fully set out and occupy almost a fifth of the notes that were provided to us with respect to the Attorney General's comments this morning. We share those concerns. We look forward to increased funding for the legal aid program because that is the bedrock upon which the sense of justice for

those who are least able to protect themselves will depend, and that influence will come through our entire society.

Some years ago the Attorney General introduced Bill 1 on opening day in the Legislature, which was a most interesting tradition, where the Legislature deals with its own business before it entertains hearing the report or beginning the debate on the speech from the throne. It is a most interesting tradition, one of the most particular and important traditions of Parliament, to deal with its own work before listening to what the crown might wish, either in detail or in the generalities in which throne speeches are often written.

Bill 1, those years ago, dealt with the matter of the problems of claims against the estates of those persons dying in Ontario which may be brought, legitimately or not, from behind the Iron Curtain. We have waited for a while to see what further developments might come in that legislation. Indeed, in order to stimulate you, I even brought in my own bill which you may recall. That does not seem to have been a sufficient prod to get the legislation moving.

I recognize that it is a difficult area. It is one in which one must be particularly precise, but I think that even in the bill I presented there were opportunities to improve upon it and to deal with the problem.

I really regret that we have not seen government legislation in place in this area and I invite the Attorney General to comment upon this theme. I know he is particularly involved with the concerns of a large number of people, particularly in the city of Toronto, who have been subject to those kinds of claims. He is well aware of the problem. He is well aware of the interest which the various publications serving people who have come from eastern Europe have made of the simple introduction of his own bill.

I would not be cynical enough to talk about elections and other things in between, because I believe the Attorney General has an honest and sincere desire to try to resolve this most distasteful problem. We know of the applications that have been made and the mechanical way in which they seem to appear wherever an estate is of sufficient size to interest the Soviet authorities.

I look forward to hearing about a new bill in this area. I hope we could at least be guaranteed that we will see that legislation in the new session of the Legislature. It is four or five years out of date from when it was first promised and its time has certainly come.

I appreciated very much the Attorney General taking the time to deal with race relations and with his own concern in those areas. He has certainly been a champion of the many groups, particularly within Metropolitan Toronto, that have been concerned about this subject.

I realize, as he says, there is a vast reservoir of goodwill and openness within the people of Ontario. There are, however, unfortunately, advocates of hate propaganda and genocide and the other themes which are distasteful to all of us. I suppose it is a measure of our own civilization how we deal with those persons who advance attitudes and causes we find abhorrent.

The right of free speech is a difficult area to impose upon and yet, as one judge I recall said, to consider the right of free speech does not allow a person to shout "Fire" in a crowded theatre. That, I suppose, is free speech, but it brings forward the kinds of problems of panic and damage and injury which require society to have some constraints on this whole theme. As I have mentioned, these advocates of hate propaganda and genocide are most abhorrent to all of us, and I am wondering how the Attorney General is developing his approach to deal further in that area.

I understand, for example, in the case of one Ernest Zundel, who has been the subject of investigation and comment by the Attorney General and in the media from time to time, that prosecution under the relevant provisions of the Criminal Code may or may not occur. I suppose that particular case raises questions of the general application of our laws within Ontario. I would appreciate hearing from the Attorney General if, in his opinion, there are changes to the Criminal Code which should be considered and suggested to the federal authorities so as to deal more particularly with such persons.

The Attorney General has commented upon the time and commitment which the development of the Charter of Rights and Freedoms and of our new Constitution has had on his ministry during nearly all of the years he has been Attorney General. While the ultimate decisions may have been made around the kitchen table on occasion, still the time, effort and homework which was done by the senior officials of his ministry did serve him well in the discussions, the involvements and the responsibilities he took on to ensure that the Constitution we now have was as satisfactory as could be arranged at the time.

There is going to be a serious number of areas impacting upon our justice system the claims

under the Charter of Rights and Freedoms to which the Attorney General referred. Given the backlog and the financial difficulty under which some areas of the courts are operating, the fact, as he refers to it, that we have had quite an increase in the numbers of defences or the numbers of claims made under provisions of the Charter of Rights and Freedoms, which will have to be dealt with in various senior levels of the courts, is going to bring a real burden on the administration of justice.

Whether provincial court judges happen to be agents of the Attorney General or not, and whether they are independent, as one recent claim has been made—

Hon. Mr. McMurtry: They are certainly not our agents.

Mr. Breithaupt:—I think we are going to see that things like that are going to have to go the whole route to be resolved one way or the other. The applications for leave to appeal the constitutional questions that we have now are going to tax our courts at the senior level for these next six or eight or 10 years as the various matters form a code of practice and of explanation as to what the politicians may well have meant when the Charter of Rights and Freedoms was developed.

I do compliment the Attorney General on the exposé he has given on the development of French language services within the courts. This aspect of Ontario's involvement in its constitutional attitude—I will not necessarily say responsibility—is one which is indeed to be encouraged.

The minister recently announced his joint study along with the Minister of Consumer and Commercial Relations (Mr. Elgie) on the entire area of censorship. I would appreciate hearing the Attorney General expand on his ideas on this subject and I would hope that he could take a few moments to attempt to tie together that theme with the results of his speech which he made in France this past summer on the whole subject of child pornography.

This is an area in which many of us are concerned. I sense that while there may be an approach that individuals take with respect to a desire to reduce censorship generally within our society, if you have to consider any one area in which you are prepared to draw the line it is certainly that of child pornography.

I am quite prepared to classify films or to allow people to see and read and hear what they want, because I do not think that anyone can decide for me what I should see or hear or read,

any more than I should for them, but if I have to make one exception it is in the field of child pornography. I am prepared to make that exception.

I know the Attorney General is concerned and I would like to hear some of his comments with respect to this whole theme and how he sees developments in the next several years that may require either changes in our statutes or certainly educational changes within our society.

Having referred to the whole matter of the Soviet estates bill, I should sing one more chorus of my song on freedom of information as well. We could have brought in legislation which—although it might not have been perfect—could have at least set a framework in which freedom of information and the protection of individual privacy could be balanced.

11:50 a.m.

Almost a year ago—I think it was December 17 last year—the Provincial Secretary for Justice (Mr. Sterling) said we would be getting freedom of information legislation. We have been promised a draft bill this fall. Even with the mild weather outside, fall ends on December 21, so we have 20 more days in which to receive some draft legislation from this administration on the whole subject of freedom of information. I hope we will have that kind of documentation before we leave, if not on Christmas eve, then before this session ends.

There are some other topics I would briefly refer to in these opening comments. The whole matter of preliminary inquiries and pre-trial conferences is something the Attorney General referred to as he cited the success the small claims project has had within Metropolitan Toronto. We will talk about more of the details if we ever proceed with the bill.

I am sure the Attorney General is as aware as we all are that in 30 days from now that court ends, unless the legislation is dealt with quite promptly. It seems to be another aspect of the difficulties of the fall session, that a bill like this which must be attended to is somewhat in limbo in the same way the securities legislation or the Pension Benefits Act or—I can think of a number of others—have not been proceeded with.

We must have this legislation and I hope the Attorney General is able to convince his House leader that it has to be on a short list or in a long list of legislation that must be in place within the next several weeks. I will not expand on my comments because we will be able to discuss the

whole small claims project when we deal with Bill 196.

We had considered visiting the small claims court project in Scarborough during the time available for these estimates. That may not be possible, but I would hope that in the new year, when the House is in session again, we could take a Wednesday—if that was satisfactory—to visit this court and to see how it has developed and what its prospects and pattern are.

We had also hoped to visit the unified family court in Hamilton. I think the committee would do well to see how both of these projects have been influential in changing the pattern of dealing with the matters which are referred to in each case. These are new themes within the administration of justice in Ontario. We should be more mindful of the progress which has been made. Even if we went to either or both of these scenes, in a rather informal way—which I am sure could be arranged—we would learn much from it.

One area that concerns me, and which the Attorney General referred to as well, is the matter of the proliferation of private police forces. The briefing notes for the Premier's policy conference attested to some very alarming statistics in this regard. There are apparently now in Ontario two private police or security persons for every publicly paid policeman or policewoman.

I recognize that a number of these themes are developing because of security needs and a variety of other areas in industry, but I would like to hear from the Attorney General as to what long-range implications he might see for the size and growth of these other security forces.

There are other developments in technology with which we have to concern ourselves as we look at the whole matter of surrogate mothers, the rights of children born in those circumstances, and the impact they have on some of the traditional ways in which we have considered the family scene within Ontario.

We now read about gene splicing and the potential which that poses for society and the possible resulting legal confrontations. If there is time, I hope we could spend a few moments discussing that subject and hearing from the Attorney General as to how he sees the development of the law in those areas and how he sees the impact of this change in family patterns, on the variety of laws which govern not only children but also other relationships within Ontario.

Those are just a number of themes that I believe are worthy of discussion. I was pleased by the Attorney General's emphasis on legal aid, by his comments with respect to the development of French language services within the province and by the underlining which he made of his commitment to ensure that race relationships are improved within the province. He has had a strong impact in all of those three areas. I congratulate him for it, because I think it is appropriate where things have been done well.

I have raised some areas which I believe need the concerns of the Attorney General and the members of this committee focused upon. I hope that when we are able to deal with the individual votes, some of the comments I have made will lead to discussions and general interest among the members of the committee.

Mr. Chairman: Does the minister wish to respond to these comments individually, or will he wait until both critics have completed before he replies?

Hon. Mr. McMurtry: I think it has usually been the practice to wait until both critics have completed.

Mr. Chairman: Fine, thank you. Mr. Renwick.

Mr. Renwick: Mr. Chairman, I trust I will be brief this morning with my responses to the opening statements, both by the Attorney General and by the justice critic for the official opposition.

I am indebted to the Attorney General for the care he has given to his opening statement. I do not believe it would be best for me at this point to attempt to cover the matters he has dealt with in his opening statement. Many of them deal with areas which touch upon particular areas of his ministry and may more appropriately be considered, let alone digested, when we come to those areas of the votes.

I do not intend to engage in a discussion by way of question and answer. As we go through the estimates, I want to try to indicate some of the matters which can be dealt with appropriately at that time, rather than requesting the Attorney General to respond when, as has been the custom, a response is required.

I have a number of such items. I also, however, have a certain number of items which come under this first main vote of the chief law officer. Due to the attrition of the last election and the departure of my colleague, Patrick Lawlor, I have for the first time had the opportunity of being critic for the justice portfolios.

It has been not only somewhat demanding,

but it has been particularly valuable to me, because I had on no occasion been other than a passing observer of the Ministry of Correctional Services. I now realize in a very real sense, that the end result of the administration of the justice system in this province in the field of criminal law can be tested through the Ministry of Correctional Services, rather than through the traditional ways of viewing that system as a continuum.

12 noon

I want to come back briefly to that theme, but first I want to turn to my good friend, Rendall Dick. It was only a year ago that we reviewed his past career and welcomed him back to this ministry. It is now an appropriate time to review his career, as the Attorney General has done, as he departs from this particular role. I will always be intensely interested in the decisions of the Premier (Mr. Davis) and his senior advisers with respect to the roles of deputy ministers. It is the world of politics, which I think deserves the attention of someone and is quite fascinating.

There is going to be a complete change of deputy ministers in the justice area as a whole. Not only is Rendall Dick leaving, but John David Hilton will be leaving the Ministry of the Solicitor General and Donald Sinclair has left the justice portfolio. It will be interesting to watch the decisions made by the now Deputy Minister of Correctional Services and it will be equally fascinating to find out who will fill the imminent vacancies in these portfolios.

It is a fascinating study and it is going to have immense consequences throughout the justice portfolios of the government. There is absolutely no doubt whatsoever that the deputies in the justice portfolios shape, to a very large degree, a great deal of the topics which are dealt with as policy matters as well as the day-to-day work of the ministries. I am looking forward to those new faces, without any disrespect for those men who are now leaving. They have made their contribution. They have decided in their own wisdom to go elsewhere, as is their choice. I think it was appropriate for the Attorney General to have reviewed and given a purview of what is to come in the ministry because new faces will deal with those topics.

I am particularly delighted that my friend Rendall Dick is leaving the ministry to go to the Law Society of Upper Canada. My colleague, the member for Kitchener (Mr. Breithaupt), has highlighted some of the uneasiness in the society with respect to the administration of justice. I, for reasons which I cannot focus upon in any

broad sense, have a deep concern about the law society, its structure, its functioning and its ability to cope with the responsibility of self-government which is placed upon it.

I think it is fair to say that a reading of the 1981 annual report of the Law Society of Upper Canada with respect to the disciplinary and defalcation matters of the bar is most upsetting. I can only hope it was some sense of the problems of the law society that have led the law society to create the position of under-treasurer to which Rendall Dick is going. I have no special knowledge of that.

I noticed with interest the one brief remark that when the Professional Organizations Committee's bills come forward one of them will deal with the law society. I don't know how you cope with the Law Society of Upper Canada. They are an inbred, very elitist organization, which believes they have some superior position in the world of the administration of justice which permits them not only to make the system work, but also seems, in their minds, to justify everything which is wrong with the system as being part and parcel of the necessity of meting out justice.

They bridle at each criticism. They suggest immediately that someone is trying to intrude upon that administration of justice and that in some way procrastination and delay are an essential part of justice. I've never understood that. I therefore congratulate the deputy on both the opportunity and the challenge available to him. I would hope that some of my concerns about the governing body of the law society will be resolved in the next several months and years under the work he will be doing there.

Perhaps this is my final tribute to the Deputy Attorney General. I had suggested during the course of the debates on Bill 179 that he would have been a most valuable witness or attendant before the committee, because seldom in the history of any society is there both a Deputy Attorney General and a Deputy Treasurer combined in one person, let alone the freedom of speech which he would have been able to achieve before that committee as he had already determined that he would be leaving. I had hoped that we would have had the benefit of the interplay of law and economics which is supposed to be the hallmark of Bill 179 and one of the main reasons why it is before the assembly.

I wish Rendall Dick very well in his career. He and I have exchanged notes about it, and he knows he leaves this place with not only my

admiration, but the admiration of all of us who have been associated with him over so many years. I extend my very best wishes to whoever is his successor and will look forward to our work with him over time.

The specific items that I believe appropriately fall under this heading I wish to deal with are matters both personal to the Attorney General and those of policy which only the Attorney General can deal with.

The first one I want to raise is the question of the native peoples and the issues that are outstanding between the government of Ontario and the native peoples that touch upon the Ministry of the Attorney General.

I read with interest the remarks of the Premier to the Premiers' conference in Halifax in August of this year with respect to the constitutional obligation that a conference be held before April 17, 1983, among the leadership of the native peoples and first ministers of the crown. That topic and its agenda are of immense concern and importance to me.

However, specifically relating to Ontario, I put an inquiry on the Order Paper earlier this year as follows: "Will the ministry table as soon as possible a comprehensive list of all issues known to the government outstanding between the native peoples in Ontario and the government?"

12:10 p.m.

I received the answer around the middle of October of this year as follows: "For the purpose of this response, native peoples are defined as status Indians, nonstatus Indians and Metis. Outstanding issues are defined as major matters of debate or controversy requiring resolution. Based on these definitions, the following is a comprehensive list of all issues known to the government which are outstanding between the native people in Ontario and the government." It proceeds to list 40 items of varying degrees of specificity. I would be glad to furnish a copy of this list to the ministry.

The ones on which I am interested in having a response from the Attorney General, not necessarily today but during the course of the estimates, are as follows: The first one is the Attorney General versus the Bear Island Foundation and the Temagami Band of Indians. That, of course, because the matter is in the courts, is a status report and a progress report on where we stand on the very substantive land title questions which arise in that case.

The second one is the Skerryvore Ratepayers

Association versus Shawanaga Band of Indians and the Attorney General of Ontario. The third one is Eagle Lake Band of Indians versus Her Majesty the Queen in right of Ontario. The fourth item is Cheechoo versus Her Majesty the Queen in right of Ontario. The fifth one is Maracle versus Her Majesty the Queen in right of Ontario.

Then, in a more general sense, is the renegotiations of the 1924 Indian lands agreement. The next item is the resolution of a number of Indian land claims which are not specified in the response of the ministry. The next one is the negotiation of disposition of unsold surrendered Indian reserve lands. The next one is the transfer of provincial crown land for northern Indian communities.

The next one is the Indian rights to harvest wild rice. The next one is the negotiations under the extended February 10, 1982, memorandum of understanding regarding amendments to the Ontario Fishery regulations. The last general one is a request by provincial native associations that the province core-fund justice coordinators.

I recognize that certain of those items touch upon and are the responsibility of other ministries of government, but I cannot but believe that matters relating to Indian lands and rights must have a significant relationship to the advice and thought and attention of the Ministry of the Attorney General. I would appreciate if, during the course of these estimates, those items could be covered. Perhaps you could make a copy of that list and return it to me in due course.

The second area I want to deal with is a concern which I raised at the time that we repealed that ancient statute, the law of mortmain. I raised at that time that the ministry, for reasons which I have never been able to understand, did not pick up on the companion recommendations with respect to policy matters related to the monitoring of ownership of land in Ontario by corporations. There were very specific recommendations made in the Ontario Law Reform Commission report, going back now several years to 1976, which said that there were policy matters which had to be decided, or should be decided, about the wisdom of a monitoring system so people could ascertain and the government would know who owned the land that was standing in the name of corporations and how much of the land was so owned.

As a related part of that report, they dealt with the question of foreign or alien ownership of land in Ontario. The implications of that are matters on which I have spoken on other occasions since that report first came out and, indeed, if I may resurrect it, as far back as the earliest committee dealing with company law matters when this question came forward. I think it is a policy matter that deserves comment and attention and must be dealt with. A good starting place is the Ontario Law Reform Commission report of the kinds of considerations which they outlined as being policy matters. That is of immense concern to me and, I think, directly falls under the first vote.

With respect to the Charter of Rights and Freedoms, I would appreciate it if we could have what is referred to from time to time as the black books. I would like to know what the advice and instructions of the Attorney General is to the crown law officers, the crown attorneys, with respect to the Charter of Rights and Freedoms and its application.

I read that there are significant differences between the advice which your ministry is giving to its officers with respect to the interpretation of the meaning of clauses in the charter and those issued by the Department of Justice in Ottawa, and I believe the Attorney General of Manitoba has a different set of instructions. I cannot conceive that there is anything of such a confidential nature that we could not have an opportunity to see what the interpretation is, or the views and opinions, which the ministry is giving to its crown law officers when matters affecting the rights of citizens under the Charter of Rights and Freedoms come to the fore.

The next item I wish to touch upon is that I am distressed, in my professional policy as a politician, with the failure of the Attorney General to have responded in any way to the arguments which I put forward both on second reading of Bill 179 and in committee with respect to the legality and constitutionality of that bill. I have no wish to transfer to this committee the debate which is taking place in the assembly on that question, but I did raise, very specifically and very clearly, and I want to raise, detached entirely from Bill 179, two questions.

What exactly is the status of the convention number 87 with respect to freedom of association in Ontario—I won't repeat the argument; I have said it on those two occasions in those debates—as well as what is the content of the

term "freedom of association" as referred to in that convention, as well as the other related international conventions to which reference was made in those debates?

There are those two areas, particularly the meaning of the phrase "freedom of association" and the statement made during the constitutional debates by the Solicitor General of Canada that there was no need to elaborate on freedom of association because it connotes rights of collective bargaining and other rights with respect to the content of those clauses. Those are fundamental rights and I think it is appropriate to discuss them here.

I would, of course, be quite content to take the Attorney General's view that he will speak on Bill 179 at an appropriate point, but apart from Bill 179, I am interested in those two aspects of that question.

The next item, and this is personal to the Attorney General, is the question of his interest—and I accept his statement and I know of his concern and interest—in the field of race relations. I have had occasion, last week and again last night, of meeting with the 22 South Asian women who were employed on the night shift at Canada Pizza Crust and who were locked out and discharged without cause nearly two months ago.

12:20 p.m.

It is extremely distressing to find that the whole of that shift comprised members of the South Asian community. It is distressing to find that up until last Friday nothing had taken place, despite the efforts to get in touch with the employment standards branch and with the Ontario Human Rights Commission about it. Up until I met them last night, no member of the employment standards branch had interviewed any of the women who were engaged in that matter.

On Friday of last week, the leader of our party, Bob Rae, raised our concerns about that situation by way of a question in the House to the Minister of Labour (Mr. Ramsay). The minister has responded and is taking some action on it, but it is quite unbelievable to me, in a society which prides itself, in the glowing terms in which the Attorney General has referred to it, on this unique experiment in Ontario in cultural relationships, that after two months with respect to the very bodies which are designed to deal with and to assist people in those situations, nothing had happened about it.

It is unfortunate that members of the South

Asian community had to seek us out in order to try to get some action on this matter. I think it is a reflection on us, certainly a reflection on all of the rhetoric which goes to extol our relationships, and it is a matter of immense concern which we will be pursuing.

I raise it both because of this specific instance at the present time and to ask the Attorney General what can be done so that this kind of thing does not happen. It should not happen. Whether it requires a change in the law is another matter of assessing the position and deciding what can be done, but the gap in time between the injustice occurring and any response from the government is a matter of shocking concern to me, which I am certain the Attorney General would understand.

I can make available a synopsis of the background of it, as I understand it, and I can also make available the statement which has gone to the company now that a legal member on the staff of the Parkdale Community and Legal Services Centre is acting on behalf of those women to try to get some justice.

Two months is an unbelievable period of time to place people in that kind of jeopardy, when the goal is to get a reinstatement in employment, which should be achieved. If there ever was an open and shut case, it is that particular matter.

My colleague the member for Kitchener has referred to the extensive period of time which the Attorney General took to deal with the legal aid plan and the criticisms of it and the necessity for it. When we come to that vote we will want to pursue why, at this particular time in the history of that plan, the Attorney General chose this occasion to make such a very positive and forthright statement about all aspects of that plan.

One of the areas that the Attorney General and I have common ground on and in which I am an admirer of his is the support which he has given to the concept of the community legal aid clinics. Again, we will have ample time when we come to the vote to deal with those matters.

The next item is one I raised with the minister specifically in the House, about the distress I felt when I found out about the records of the employees of Canadian Johns-Manville Co. Ltd., in the asbestos business—which is now called the Manville Corp., I believe, through some corporate shenanigans they have gone through. So far as I can tell, on the basis of the evidence given by the Scarborough medical officer of

health to the standing committee on social development here, all of the employee records are now in Denver, Colorado, and are not here in Canada.

There is a time delay, as everyone knows, between the inception and the onslaught of the disease of cancer and asbestosis, which means that somewhere down the road there are going to be significant claims made by former employees. If the company records about those employees are not in Canada, we are going to have trouble. I think the Attorney General said at the time that he would consult with his colleagues to see whether the statement is true and, second, what can be done to get those records back into Canada.

The second aspect of that question that I raised with him was the question whether there isn't some method by which funds of Manville Corp. can be sequestered in Canada in such a way as to meet ongoing claims which may be made, rather than having all of the other employers with the same classification in the province somehow or other having to bear the burden of the cost of potential workmen's compensation claims in those areas. I would like it if at some point the Attorney General would respond to that aspect of it.

I have but two other items that I believe are appropriate under this leadoff. We can deal with them at an appropriate time.

I am extremely interested in what the financial negotiations with the federal government are, as well as in the problems as the Attorney General sees them, with respect to the bringing into force the Young Offenders Act. It is an area about which, because of my role both within the justice policy field and my interest generally in that question, I would like to have some detailed information from the Attorney General.

12:30 p.m.

Although I may just have one other after this, I am still concerned about the relationship between the Ministry of the Attorney General and the gay community. I am having difficulty understanding the reasons why the Attorney General has appealed the second acquittal on the first charge of the Body Politic. I am interested in the Attorney General's intentions with respect to the acquittal on the second charge which took place just recently.

I believe I understand what the goal of the Attorney General is in relation to the action he is taking, but I would prefer to have an explana-

tion from him about the decisions of his ministry with respect to those cases.

The other aspect of it is one on which I had hoped a year ago the Attorney General would have taken my suggestion. He will recall the large number of people who were charged as found-ins after the bathhouse raids in January or February 1981. I had recommended that on the basis of the statement you made in the Francis Fox matter in the Legislature, when you decided not to proceed with prosecution, that you should seriously consider that the charges of the persons in the bathhouse raids with respect to being found in should have the same exercise of your discretion as Attorney General and that they should not be pursued. I set out at that time the reasons why I felt they should not be pursued, and I was extremely concerned when nothing took place in response to that suggestion.

I would ask the Attorney General to check the figures which I now have, because my access to statistical information is nowhere near as good as his is. The figures I now have show that 275 cases went to the courts, 237 were acquitted and 36 were guilty, but I have no idea whether those were guilty pleas or whether they were guilty as a result of trials. My sense tells me that a significant number of those were simply straightforward guilty pleas. I understand there are two cases still before the court and that there are six more still to be heard.

I find that a distressing comment on the administration of justice. We can discuss this at the point where the Attorney General provides this committee with the accurate information about the number of charges which were laid and the disposition of those charges, the time it occupied in the courts to process those cases, and an estimate of the cost which is borne by the taxpayer.

If these results are any indication of it, then I think the Attorney General was seriously at fault, either on his own initiative or in response to the suggestion I had made, in the statement he then made which has become part of the jurisprudence of the Attorney General's office, that very careful statement he made at the time when he decided not to proceed with the charge to prosecute Francis Fox, which was so directly applicable to this kind of a situation, that I find it quite unbelievable and quite distressing.

You will note carefully that I am only speaking about the charges with respect to found-ins. I was not speaking about the bawdy house charges which were laid at that time. That is an

entirely separate and distinct matter. To have put individuals in our society through a significant degree of anxiety, let alone the results which were obtained, let alone the cost to the administration of justice and what it did to those courts where those cases were heard, leads me to believe that the Attorney General must answer for that very directly.

The other aspect to that question, on which I am having extreme difficulty getting any handle, is whether or not there is police harassment of the gay community. The police are not now under your particular jurisdiction. It is, however, quite true that the attitude of your ministry with respect to the gay community reflects, confirms or supports attitudes which are reflected through the police force, particularly in Metropolitan Toronto. I do not know whether it can be characterized as harassment in the sense that there is a pattern of response which is recognized as the response the police should have to the gay community.

Those three aspects of the relationships of the gay community to our society generally, to the police in particular, and to the administration of justice are matters that I would like the Attorney General to respond to in some detail.

The other question is a difficult one. I am not calling upon any member to express his own personal views or attitudes about it at all, nor am I asking the Attorney General to speak about his personal views, but I would like to bring up the question of abortions. It has come into the public consciousness again because of Dr. Morgentaler's statement that he is going to open a clinic in Ontario.

My concern is a very simple one. The Parliament of Canada in its wisdom decided the grounds and bases upon which abortion was justifiable. It set out a process by which I believe it intended that there would be a sufficient degree of accessibility for women wishing to have their cases considered by hospital committees.

I would like the Attorney General to respond to that, because from the statistical information I have been able to obtain—and whatever other anecdotal and other information that all of us probably have at our disposal—the whole question of accessibility throughout Ontario is very questionable.

If it is in the Criminal Code, if there is a process by which a particular act can be justified under the code and if the method by which the justification takes place is hospital commit-

tees, then the Attorney General charged with the administration of justice has an obligation to provide accessibility throughout Ontario. The information I have would lead me to believe there is a significant denial of access for many people in the province to hospital committees, by reason of dispersal geographically in the various areas of the province and because this is not a topic that lends itself easily to discussion.

I am not raising the question of whether or not the Criminal Code provisions are the correct provisions or are adequate or should be adequate. It does however, seem to me that it requires the Attorney General to address the question of accessibility in considering whether or not the present facilities in Ontario are adequate.

If the act of abortion is committed other than through the processes justified under the Criminal Code, it is a criminal offence. It seems to me then that there is a responsibility on the administration of justice to provide the degree of accessibility that is reasonable, proper and effective for women in the province. Despite the high profile of Dr. Morgentaler and the concern which he raises in a number of people's minds on both sides of that question, it has raised front and centre again the whole question of accessi-

bility in the province. I would like the Attorney General to respond to it.

Those are my remarks. I would appreciate the Attorney General's response on the first vote and I have a number of other items that we would like to raise as we go through the particular votes of the estimates.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Minister, do you wish to respond at this point to the two critics?

Hon. Mr. McMurtry: What were the wishes of the committee so far as—

Mr. Renwick: Perhaps we could wait until the next sitting of the committee, if that is agreeable.

Hon. Mr. McMurtry: That would be agreeable with me if that is agreeable to the committee.

Mr. Breithaupt: It would be convenient to adjourn at this matter on vote 1401(1) and then proceed with the Attorney General's comments tomorrow afternoon.

Mr. Chairman: Yes. Is that satisfactory over here as well? We will adjourn at this point, 12:41 p.m., to reconvene tomorrow following routine proceedings. We will then begin with the reply of the Attorney General to those comments.

The committee adjourned at 12:41 p.m.

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 Renwick, J. A. (Riverdale NDP)
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No. J-12

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Thursday, December 2, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 2, 1982

The committee met at 3:50 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

On vote 1401, law officer of the crown program; item 1, Attorney General:

Mr. Chairman: Having a quorum in place, we will carry on with the estimates of the Ministry of the Attorney General. There are 12 hours and 29 minutes remaining. We left off yesterday at vote 1401, item 1. The Attorney General was about to reply to the critics.

Before that—now that we are on the record—we have one private bill—a 10-minute one. There is just one section left on the Windsor bill. We also have a North York bill that is not a short one. We need five days' notice to pass the Windsor bill, so could we meet at 9:45 a.m. next Wednesday? Is that satisfactory? Thank you.

Mr. Elston: Mr. Chairman, if I might, Mr. Breithaupt has been detained in the House to speak to a private member's bill. He wanted me to express his regrets for being tardy in arriving and to ask the Attorney General to continue to reply to his comments.

Mr. Chairman: Fine. Mr. Minister.

Hon. Mr. McMurtry: Mr. Chairman, colleagues, ladies and gentlemen, I would like to thank the justice critics for their thoughtful presentations. We already have a number of items on the record which should stimulate a lot of interesting discussions, perhaps even some modest debate.

I will try, initially, to deal with the submissions in the same order they were made. My answers will not totally address the important matters that were raised, but I would like to attempt to deal with each of them briefly in the order they were brought up by Mr. Breithaupt and Mr. Renwick.

Mr. Breithaupt's first submission was his concern about the inadequate level of funding for the administration of justice. Some of the members are well aware that I have never taken the position publicly, or indeed privately, that I was satisfied with the level of funding that had been given to the Attorney General's ministry.

One has to look at it a little more carefully than simply saying last year it was 0.9 per cent of the budget, this year it is 0.96 per cent and therefore it is under one per cent. There are many demands made on government and a very large percentage of our budget is simply passed through to other public municipal bodies, so it does not really tell the whole story if one looks at it in terms of a percentage of the overall budget.

While I believe the funding of the ministry has not achieved levels that I consider adequate, I have to concede that at a time of government restraint, which commenced about the time I joined the provincial cabinet in early October 1975, the ministry's increases in percentage terms—and all of these increases did bear some relationship to one another—compare relatively favourably with most other ministries.

I think it is only fair to recognize that, in view of the fact the former Deputy Treasurer is sitting beside me. He has had to wrestle with these budgetary problems for much of the time I have served as the Attorney General. I think the funding for the administration of justice in this province has not reached a satisfactory level. In his report on the administration of justice in the 1960s, Mr. Justice McRuer talked about the justice system being the poor cousin of government. This was in the relatively affluent 1960s. I am very concerned about what could happen in the not-so-affluent 1980s. This is something that is of great concern to me.

Most people in society pay lip service—to the very least—to the importance of a high quality administration of justice. I have never encountered anyone who would quarrel with that as being a desirable goal. The simple reality I found during the past seven years is that when priorities are established, the administration of justice does not always feature high in many people's minds. This is for the simple reason that most of our citizens sincerely hope they will never have any direct contact with the administration of justice. Most citizens have no desire to be in a courtroom in any capacity, certainly not as an accused. They prefer not to be even in the courtroom as a civil litigant or as a witness.

Over the years, we have been competing with

hospital beds, social services, education, highways and a multitude of other very legitimate concerns. I will be the first one to concede, very frankly, that the competition has always been very tough. We are fortunate we have a large number of very dedicated people within the ministry and throughout the province who have a real commitment to the administration of justice in this province.

Whether they be the administrative staff, our many lawyers or the judiciary, they all have some concerns with respect to levels of funding. At the same time, they have demonstrated a very serious commitment to the administration of justice in this province. It is to their credit that we have as high quality administration of justice as we do, notwithstanding the fact the funding, in my view, has been inadequate.

While the administration of justice must be accountable on a day-to-day basis, as any other vital institution in the community, the simple fact is that the people of this province enjoy a very high quality administration of justice, despite our many problems, many of which we will be discussing during these very estimates. We recognize the problems and the future challenges.

While imperfections do surface from time to time, I believe most citizens have a very great respect for the overall administration of justice in this province in all its components: the law enforcement agencies at the front end, the crown prosecutions and the quality of the judiciary.

4 p.m.

One of the aspects of the administration of justice in this province that I am particularly proud of is that while I have heard many criticisms over the years—and I expect to hear many more criticisms—I do not think anybody has ever seriously suggested that any members of the Ministry of the Attorney General, involved as they are in very sensitive matters on a day-to-day basis, have ever been motivated by any other factor than what they believe to be the public interest of this province.

While there will be disagreements as to the manner in which certain cases are handled from time to time or the results of prosecutions, etc., I cannot recall a single serious allegation to suggest that any crown counsel, for example, or any other member has been motivated by some partisan political factor. The public interest continues to be the hallmark of the conduct of the people I have been privileged to be associated with during the past seven years plus.

Mr. Breithaupt, understandably, raised the

issue of the propriety of police conduct. He mentioned the Nelles case and the Proverbs case. I have nothing to say about the Nelles case at this time since the matter is still under investigation. I expect the circumstances surrounding the Nelles case to occupy the interest of a number of people for some time to come. We understand that. It is a little premature for me to be commenting one way or the other.

Some of the tactics that were given wide and sensational publicity in the Proverbs matter have raised some serious questions as to police conduct. For example, how far should police officers be permitted to go in telling outright lies in order to lure somebody into giving them what they believe to be very important and vital information with respect to criminal offences? That is an issue we will have to continue to address.

What saddens me in all of this discussion is the relatively rare recognition of the high level of accountability we have maintained in this province when it comes to police conduct. I have heard a good deal of comment over the past seven years in my capacity as Attorney General and during the period I served as Solicitor General that we are being overly protective of law enforcement agencies.

The truth of the matter is quite the opposite. We have, so far as it is possible for law officers of the crown to do so, insisted on a high level of conduct. When there is reasonable grounds to believe police officers have broken the law, they are subject to the same prosecution as any other citizens. If anything, I would say police conduct on a day-to-day basis is more closely scrutinized than any other group of citizens in our community.

It is important that I be as frank as possible with my colleagues in saying that it is somewhat of an irony to me, reflecting on my seven years in this office—and one cannot pay too much attention to gossip or idle grumbling—that certain expressions of concern have reached my ears during this time, complaining that when there is evidence of police misconduct, the Ministry of the Attorney General is overly zealous in its prosecutions. That is also an unfair criticism. It is just one of the gentle ironies of public life. One day we are being overly protective and the next day we are just as likely to hear that we are overly zealous when it comes to prosecuting police misconduct.

That says to me that our lawyers, who are responsible for the criminal justice system in this province, act in what they believe to be the

public interest. One appreciates that in politics one has to deal with the perception almost on the same basis as one deals with the reality.

When it comes to concerns expressed about the propriety or otherwise of police conduct, I can state with a great deal of confidence—with my intimate knowledge of the criminal law office, the crown law office, the crown attorney system and our ministry—that our lawyers insist on a high level of police conduct on a day-to-day basis. When this is not observed, the accountability is there. I am very confident that is the way it will continue to be.

Unfortunately, it is necessary to prosecute police officers from time to time, just as it is any other group in the community. No human institution is without some people who disappoint you. One only has to look at the record in the last seven years to appreciate that our crown law officers have been very vigorous in acting in the public interest when it comes to police misconduct.

The next matter Mr. Breithaupt raised was that of the young offenders legislation. There is no question that is going to have quite an impact on the justice system. It is occupying a great deal of our time as well as the time of officials in the ministries of Community and Social Services and Correctional Services, as we gear up, particularly for the changes in relation to the age of the young offender. I do not intend to go into any great detail at this particular time, but I imagine we will come back to the young offenders legislation during the course of these estimates.

In relation to compensation of individuals who have been discharged or acquitted, Mr. Breithaupt expressed some degree of appreciation for the fact we had laid out a number of options that might be relevant to this issue. He suggested that a conference be held once our paper has been made available to the public. I think it is a very good suggestion. I would be quite happy to pursue that. This is an issue that requires a good deal of input from the community and the idea of such a conference makes a good deal of sense.

The next item Mr. Breithaupt was interested in was legal aid. In his words—I have not counted up the number of pages—"seven or eight pages were devoted to legal aid."

Mr. Renwick: Pages 27 to 35 inclusive.

Hon. Mr. McMurtry: Thank you, Mr. Renwick.

Mr. Renwick: Have you distributed copies of your remarks already.

4:10 p.m.

Hon. Mr. McMurtry: I hope they will be distributed. The remarks are directed to the public in general and to my colleagues on both sides of the House. In a time of serious government economic restraint, I worry that a program such as legal aid could suffer unless those who are committed to it are vigilant in maintaining a very important program.

At this time, I really cannot add to anything I have said, but it is a program that does require more public support than what I have sensed in the past. I hope these remarks may generate some discussion. They did not generate much interest so far as the Toronto newspapers were concerned with respect to my own personal commitment and that of the ministry to the legal aid program.

Mr. Breithaupt also asked some questions with relation to Bill 1. I cannot recall when it was first introduced. It is a bill sometimes referred to as the Iron Curtain estates bill. It was rather interesting that a professor, who had been a member of the Soviet bar and now teaches at Western University, came in to see me just this week to discuss possible amendments to the legislation.

Mr. Breithaupt recognizes it is a very complex issue. Some people feel we should not introduce the legislation at all. Other people, like Mr. Breithaupt, judging by his own private member's bill, feel we should go further than our legislation. I did not want to introduce the legislation this fall because I knew it had no chance of being passed, given our preoccupation with some of this other legislation. I thought it might look a little foolish to introduce it and once again, Mr. Breithaupt, have it die on the order paper. I did not want to introduce it unless I thought there was some reasonable hope of passage. We have known from early on in this Legislature that there would be relatively few bills passed.

Mr. Breithaupt: If I could interrupt the Attorney General for only a moment to apologize for the delay of my attendance. I was speaking in the private members' hour and I regret I was not present to hear some of the remarks the Attorney General has made. I will note them in Hansard.

Mr. Conway: These counsel are so polite to each other that the lay people are always impressed.

Mr. Breithaupt: That is why we do it.

Mr. Piché: You are not asking the Attorney General to start all over, are you?

Hon. Mr. McMurtry: The next item raised by Mr. Breithaupt concerns race relations. I appreciate his comments and support in the priority we have attempted to give this issue.

He mentioned, in particular, the material that is generally attributed to Mr. Ernst Zundel, a gentleman residing in this community who has unfortunately become better known than he deserves. He is personally committed to creating—and I put it in the mildest terms—as much mischief and damage as he can to what can be a relatively fragile social fabric by his preoccupation with propagating, in general terms, hatred and intolerance.

During the past two years, officials of my ministry have been made aware from numerous sources, including the Ontario Human Rights Commission, many concerned citizens and other countries, of material that is allegedly written or circulated by Mr. Zundel. A lot of this material that is attributed to him falls generally into two categories: material which we suspect is being circulated by Mr. Zundel and his colleagues, but which we simply cannot prove, and other material about which we can allege some connection.

There is a voluminous amount of material. It has occupied a great deal of the time of the ministry. We are literally talking about, not busloads, but cartons of material which have been reviewed by at least one counsel and in the vast majority of cases by three counsels. The entire review process is under the direction of the director of crown attorneys, Mr. John Takach, who is here.

I might add, if any of the members are interested, we do give allegations of hate propaganda a very high priority. Given the pluralistic nature of our society, we will continue to give that priority to this issue. Also, Mr. Takach has ensured a continuity in counsel reviewing the material, which not only has contributed to extensive experience being brought to bear, but has also resulted in an analysis of the material from a cumulative perspective. We assure members of the committee that all of the material has been summarized and there are legal opinions on each of the items in question.

From a criminal law point of view, the material generally raises certain legal issues involving the interpretation of the legislation as well as Mr. Zundel's specific intent. I can say without any hesitation that I and my criminal law advisers have certainly found the material at the very least objectionable. However, at the same time, we are aware of the difficulty in

relation to the hate propaganda provisions of the Criminal Code or the Charter of Rights and traditional concerns with respect to freedom of expression. At this time, there has simply been insufficient evidence to warrant my consent to prosecuting Mr. Zundel.

My information is not complete at this time with respect to the postal authorities, but my belief is that his postal privileges may have been rescinded by the appropriate federal body. At present we do not know precisely the current status of Mr. Zundel's postal privileges, and this is something we are trying to learn.

I mentioned the two categories. Some of the material which may have been in the possession of Mr. Zundel—and it cannot be proven—we considered to fall within the definition of hate propaganda and was referred to the police for investigation with regard to the distribution and circulation requirements of the Criminal Code provisions. Unfortunately, we have not been able to obtain sufficient evidence to warrant laying of charges with regard to the circulation or distribution of material we felt definitely offended the hate propaganda sections of the Criminal Code.

Most of this material was not current. Much of it contained references to the 1960s. Material referred to the police by many interested citizens, which was also considered to contravene the provisions of the code, has been known to exist throughout the world for at least 50 years, but at this time there is no evidence of circulation or distribution in Ontario.

4:20 p.m.

In this context, I might say that our inquiries have led us to obtain material in West Germany, for example, which we felt might bear a relationship to the activities of some of these individuals in Ontario. I am emphasizing this because we have given this a very high priority.

With respect to proposed amendments to the Criminal Code concerning the hate literature section, I have said publicly, and I think relatively recently, that I think it may still be a little premature to consider any amendments at present. The Criminal Code provides broad defences of public comment and opinion upon religious subjects. I think we have to put all of this in perspective and appreciate that experience has demonstrated that some comments are often made by persons out of frustration, deserved or not, or momentary anger, which, while being extremely offensive and disgusting in nature, are not deliberately calculated by the author to

wilfully promote hatred against any group within the meaning of the Criminal Code.

As I suggested earlier, when considering the issue of hate literature, section 2 of the Charter of Rights must also be taken into account, and I believe it is generally consistent with the Criminal Code.

One of our concerns throughout the years I have had the privilege of serving in this office is to be careful not to inadvertently make a martyr or give undue publicity to someone who simply desires to bask in the glory of publicity for his ill-conceived ideas. I can recall a situation with a book that was circulated in northwestern Ontario. It was very offensive with respect to some of our native peoples. I think it was called *Bended Elbow* No. 1 or No. 2.

Mr. Breithaupt: In the Kenora situation.

Hon. Mr. McMurtry: Yes. After a good deal of consideration and much searching of conscience, we decided, or I decided—it was ultimately my responsibility—not to consent to prosecution although it was felt we might well make out a case. I was pleased at the response from the native leaders, which was, generally speaking, very supportive of our decision.

While the case was certainly not an obvious breach, we thought perhaps in normal circumstances it might warrant a prosecution, but it would undoubtedly, first, give this disgusting little piece of garbage a lot of undue publicity and probably add to its circulation. Also, it would risk making something of a martyr of the author, who would obviously have enjoyed the publicity. I only mention this because these are the sorts of considerations that go into this type of decision. It certainly could have exacerbated relationships in that particular community. I repeat that the native leaders viewed the issue very objectively and generally agreed with our decision, despite their own considerable concern about this particular publication.

Unfortunately, there are very few reported cases on the legal ramifications of hate propaganda in the Criminal Code. Fortunately, we do not have as much experience of this section of the code as one might have thought when it was first passed, in 1965 I think. One of the reasons is that, while the distribution of hate propaganda, if I may use the general term, continues to be a problem, it is not as great a problem as some people might have feared when one looks at the context of the debate that took place prior to its passage in 1965.

What I have said on many occasions is that because freedom of speech is such a sensitive

issue one has to be relatively cautious in making the Criminal Code all-embracing or cast in a wider net that could catch individuals it was not intended to catch, unless there is a compelling reason to do so.

At the same time, I want to make it very clear that this issue will continue to be given a high priority in our ministry and we are going to continue to monitor the situation very carefully. If we come to the conclusion—and we certainly welcome the advice of our colleagues in the Legislature—that some amendment to the Criminal Code is warranted, we won't hesitate to press for such an amendment.

In conclusion, with respect to this very difficult subject, it is appropriate to observe that there are other statutes and mechanisms for combatting hate or ill feeling amongst minority groups, such as the Canadian Human Rights Code, the Canada Post Corporation Act and the Ontario Human Rights Code. Although there is no doubt there is an important place and role to be played by criminal sanctions, it is still my view that some of our statutes and institutions may, in the long run, be a more important and a more effective tool in ensuring that statements of ill-will or hatred against minority or religious groups do not become a widespread phenomenon in our community.

Mr. Breithaupt next raised the issue of the Charter of Rights. He mentioned, in passing, an argument that was made in provincial court last week that our provincial court judges were perceived to be agents of the Attorney General and therefore not capable of presiding in an impartial manner. That case is before the court and I did not hear the argument. I do not want to comment on that particular case other than to say, as was reported in the press, the suggestion that provincial court judges are in any way employees of the Ministry of the Attorney General is nothing short of an absurd objection.

I would be very happy during the course of these estimates to outline in some detail the provisions that have been made over the years to strengthen the independence of the provincial court judiciary in this province. It is an issue that is obviously of some very fundamental importance to the administration of justice in this province.

I suppose that argument demonstrates just how far people are prepared to go to argue provisions of our new Charter of Rights if they think it will work to the advantage of a particular accused person.

Mr. Breithaupt: I think that is the point. We are going to have more and more of a variety of suggestions made which, no doubt, are going to use the time and the involvement of the courts, perhaps most worthily, but which certainly are going to change the pattern of getting a certain amount of other work done.

Hon. Mr. McMurtry: Yes. It is going to place, I certainly agree, additional burdens on the courts. I think it is important to note that our own Court of Appeal has appreciated the importance of dealing with some of these issues in a relatively expeditious manner and is giving a high priority to charter-related cases in order to clarify these issues. I think there is perhaps a five-member court even sitting this week with one of the major cases. Our appellate court, the Court of Appeal in Ontario, has made it very clear that this is an important issue and that priority will be given to these cases.

4:30 p.m.

Under the heading of the Charter of Rights, it might be a good point to also deal with Mr. Renwick's references to the so-called black book, instructions purportedly given by the Attorney General to crown prosecutors across the country.

There has been a little bit written about the so-called black book, which in reality is a loose-leaf binder which was the product of work by law officers of the crown in all provinces who met with the federal Deputy Attorney General. Obviously, once the charter was enacted and even before its proclamation, it was important that a lot of people do a lot of homework, particularly considering the very general language that was used in the charter. All provinces met with the federal Department of Justice to circulate papers and opinions with respect to what might be relevant in considering the various sections.

Much of the work is now probably a little out of date, given some of the decisions. When it comes to my personal instructions to my crown counsel, I have a copy of those excerpts which might be available at this time. As to the material that is available that has been gathered from all the provinces, as I say, some of it is out of date now. I don't even know—Mr. Takach is here—just how widely all of it has been circulated throughout our crown attorney system. I am not sure that many of our crown attorneys have used it or even seen it.

As for any justice critics wanting to take a look at this particular book, I would be very

happy for him to do so. When I say "take a look at it," we would have to have an understanding that it not be circulated because a lot of the material is simply not our property. It is original material prepared by lawyers and crown attorneys in other provinces and we have no right to circulate their original work.

Mr. Breithaupt: You don't want to read about the publication of a new text by Renwick and Breithaupt on the Constitution.

Hon. Mr. McMurtry: I am advised that at the time some of this research material was circulated, a copy of my remarks, *The New Charter and the Role of Lawyers*, was distributed to all crown attorneys. I had delivered these remarks to a conference on the impact of the new Charter of Rights and Freedoms on Canadian business, which was held in Toronto early last February. This, apparently, was what was circulated so far as any comments or instructions from the Attorney General of this province are concerned.

Mr. Breithaupt: An unimpeachable source.

Hon. Mr. McMurtry: In this address I stated, and I quote myself: "You have all heard the argument that the charter represents a major break with our tradition of parliamentary sovereignty, that by entrusting the definition and protection of individual rights to the courts, we have transferred willy-nilly to an appointed judiciary too much of the policy-making function of elected legislatures. Time alone will tell whether or not that is a valid criticism, a matter which I will address later in these remarks."

"What I do know is that any new role for judges will be influenced profoundly by the contribution of the bar. Sound jurisprudence rests on sound advocacy. The judges cannot develop the delicate balance between freedom and order, between individual rights and the claims of society as a whole, unless the legal profession provides arguments that address the important issues in the charter, issues central to the future quality of life of our nation."

Later on I stated, and this is again the portion of my remarks that was circulated to our crown attorneys: "I am still enough of a lawyer to know that once these matters have been committed to writing in a statute or a written constitution, it then becomes open season. Lawyers advising clients can, and no doubt will, urge any reasonable interpretation of the charter which will advance their client's interests; in fact, they have a clear duty to do so. As one noted jurist has observed, 'Over the centuries what we call

freedom for the individual has been won partly on the field of battle, partly in the legislative halls but, for the most part, in the courts of law.'

"I say, however, that we break faith if we ignore the legislative history, that is, the events leading up to the agreement of November 5, 1981. We do the community a disservice if we pass hasty and rash judgement on the charter, if we seek to interpret rights and freedoms in the abstract and out of context, or if we invoke the judicial process to advance our own views of what the charter ought to be, rather than to seek clarification and confirmation of its scope."

I might say also that in this address I took very strong issue with comments attributed to some law enforcement officials, perhaps even one or two crown attorneys, that the new charter was going to encourage criminal behaviour and, on the other side, arguments that it did not go far enough. I took very serious issue with these extremists' statements on both sides of the issue because I felt they just did not represent what the reality was.

I spoke to the crown attorneys at their fall conference a few weeks ago and at that time I stressed that I expected crown attorneys to advance sound legal arguments and positions in keeping with the spirit of the charter and stressed the importance of the charter and my firm belief in the need to fairly and freely interpret it without any attempt to diminish or undermine it. I can say that I am confident that crown attorneys have carried out their responsibilities and duties in this regard.

4:40 p.m.

In any event, if any justice critics, or indeed other members of the committee, would like to view the material we have, we would be very happy to have them do so, on the understanding that it is not all our property and I suppose there are some copyrights with respect to some of the various people who may be working on books.

We expect to see quite a plethora of books of one kind or another about the charter. A number of legal services have already commenced them.

Mr. Conway: If they are as interesting as Valpy and Sheppard, they would be very good reading.

Mr. Renwick: Perhaps you will permit me a comment on that matter, Mr. Chairman.

The reason I raised it was, leaving aside the esoteric question of property rights, what conceivable objection—apart from that property rights question, which is a hurdle I did not

expect you to raise—is there to people knowing the attitude of the crown attorneys on the issues or what considerations they are going to put forward in a given matter? Why could it not be made public? I recognize it changes from case to case and so on.

Hon. Mr. McMurtry: Parts of it may become a text. The material is material that has been prepared by a number of lawyers in different provinces. We have gathered the material. Some of it, as I said a moment ago, is out of date.

It is certainly, at the very least, important food for thought. It is not an official position so far as the Ministry of the Attorney General of Ontario is concerned. It is just a lot of working material we felt should be circulated to some extent in order to stimulate thought, discussion and consideration of the various issues which might or might not be raised.

Mr. Takach is here, Mr. Renwick, and perhaps he is more familiar with it than I am.

Mr. Renwick: How does this stimulate discussion if no one sees it? I have a problem with that.

I would also have a problem in trying to assess whether or not those—whatever you want to call them—guidelines, discussion books, background papers, reflect an attitude. Do they reflect any kind of collective attitude on the part of the Minister of Justice in Ottawa and the Attorneys General of the provinces? Do they take a view of the charter? Are they objective—on the one hand and on the other hand type of arguments—with respect to the matter?

What is the position of defence counsel in a particular case? Is it part of the disclosure of the crown to the defence of what their argument is going to be on constitutional matters, or is it just going to continue to be a lawyers' little battle of wits, depending on either their erudition or their imagination as time goes on? That is my concern.

I do not particularly have a concern to sit down and read the whole book. I was, for example, very much concerned at the conference on corrections to hear the head of the Ontario Police College, although his name does not come readily to my mind—

Mr. Dick: Doug Drinkwalter.

Mr. Renwick: —who, with the obvious caveat that he was voicing his own personal opinion and was not speaking in his role of director of the police college, had the attitude that day that the Charter of Rights did not change anything. I think if anyone read his address that would be the sense he would have about it. I certainly am concerned whether that is the attitude that is

conveyed through to your agents in this province, sir, the crown attorneys.

Hon. Mr. McMurtry: I can assist you and I would like the help also of the Deputy Attorney General, who is more familiar with some of the details than I am in relation to this research material.

Our position in what has been reflected by a couple of decisions in the Court of Appeal is not that the charter did not change anything, but that in our view it did not create a whole new body of law.

I think Mr. Justice Eberle in his decision talked about the fact that the charter does not automatically sweep away the vast body of law that developed over the years. The former federal Minister of Justice, Jean Chrétien, has said on a number of occasions that the charter was an enunciation of rights that presently exist, rights that we have so often taken for granted, and rights we believed to exist but which were not entrenched in a charter.

I think the member for Riverdale (Mr. Renwick) certainly recognizes the importance of that perhaps more than most people who feel if we have the rights and we have always recognized them, then why do we need them in a charter? That is obviously not your point of view. As a matter of fact, I think I recall at our last estimates—I do not want to misquote you—you made it very clear that the amending formula would not be the appropriate mechanism to change the charter.

I believe as strongly as you do in the entrenchment in the charter of these rights which exist, which many Canadians unfortunately simply have taken for granted, but I do recall very well you saying that nothing short of total unanimity, if even that, should be permitted to change any of the provisions of the charter. I remember those remarks today as a confirmation of your own very strongly held beliefs, which I respect, in the importance of the entrenchment of these rights.

Mr. Renwick: I just have a single point and I do not want to delay the estimates on that. Raising the question of the so-called black book, the last thing we need is to have the matter shrouded in some kind of mystery. Whatever the instructions to the crown attorneys may be with respect to the various arguments they might anticipate, whether you call them instructions, guidelines, background papers, pros and cons of judicial arguments and so on, I cannot possibly conceive that we should allow some kind of mystery to grow up to create this

view that there is some kind of antagonism between the crown and the defence on fundamental matters.

Surely you want to stimulate an intelligent, imaginative discussion about the scope and ambit of these rights rather than to play a cat-and-mouse game in court with one guy having a black book that has had the benefit of a lot of erudition and someone operating under a legal aid certificate coming before the court without the benefit of this erudition, valuable or not. It should be the kind of thing about which young lawyers or other lawyers coming out, defending people in criminal courts particularly, are going to have the opportunity to say, "If I go into court on this kind of an issue, this is the kind of thing I am likely to run across from the crown attorney who is involved in it."

Mr. Breithaupt: You do not want to be told about a lot of unreported cases.

4:50 p.m.

Mr. Renwick: Yes, a lot of unreported cases. You cannot expect every member practising at the criminal bar to be an expert on all the imaginative content that might have gone into the elaborations of the Charter of Rights, nor do you want to make it a special preserve of some particular part of the so-called expensive criminal law bar that can afford the luxury of buying all of these books and has the resources to have some number of flunkies around who can do the background scholarship.

All the stuff should be public, whether it had to be revised or edited, and put out on an on the one hand or on the other hand basis. I'd like to know, if someone says, "I'm going to argue an undue delay, speedy justice argument," or something like that, I'd like to have some decent kinds of arguments.

Hon. Mr. McMurtry: I've got a feeling, Mr. Renwick, that I have at least a couple of budding authors in my own ministry who will become very public in the not too distant future with respect to their view.

Mr. Renwick: Morris Manning is putting out a book which will be out later, and John Laskin is—

Mr. Dick: Isn't Clayton Ruby editing the series?

Mr. Renwick: It may well be. It will soon become a lawyer's game if we are not careful.

Hon. Mr. McMurtry: To put this a little bit in perspective and to remove a little bit of the

mystery and mythology that has been drawn up—

Mr. Dick: Mr. Chairman, perhaps I could add something, because it was so innocent in its inception.

After November 5, when the decision was made and it was forthcoming, the Deputy Attorneys General at their next meeting, including the deputy in Ottawa, felt there was something new that had developed. All of us were interested in bringing together a body of information for our purposes so we would all understand, as the Deputy Attorneys General responsible for the administration of criminal law with our law officers. So we asked each province to set up a committee—and Rod McLeod, in our ministry, happened to be the chairman of the committee—to bring together a paper which could be circulated and which could then be discussed and upon which we could all face some of the real issues.

All of the provinces went away with all of their officials and advisers and started to prepare papers on various things. Then the committee got together and distributed a sort of a chart of who would do what to whom and in what fashion and what detail. Various components of the charter were then farmed out and various provinces had their people work it up.

Ergo, over a period of preparation for the next meeting, quite a mound of material developed, the essence of which and a lot of which is the basis for this so-called binder that is black in colour, but the material in which is really quite mundane, with all respect to the authors. The reason for that was so we could, and ultimately did at our next meeting, sit down to discuss things such as—and Mr. Breithaupt raised a very important point—how this is going to proceed through the courts, especially the provincial courts and the magisterial courts in some provinces, so as not to clog them. That takes you to subsection 24(1) where, in the case of any person who raises a right and so on, it may be determined in a court of competent jurisdiction.

There was a lot of material which demonstrated the arguments that went together and supported the view that all of these matters as raised would not have to be referred off to the Court of Appeal through section 52 of the charter, but could quite reasonably be dealt with by the court hearing the particular issue in which it was raised; ergo, the provincial court judge had jurisdiction to decide a matter respecting a charter defence that was raised at that

level and therefore it wouldn't become something that would stop the whole system—

Mr. Breithaupt: It would automatically stop, even though there might be appeals.

Mr. Dick: There could be appeals and proceedings on them, but that trial itself would go on with that in mind.

Those were the kinds of issues that came up, the condition in section 1, for instance, relating to that which is demonstrably justified in a democratic society, and how that would relate to a whole lots of things, the problems of reverse onuses, etc.

All of this was brought together and a very brief paper was presented, which I feel is confidential, since it was given to the Deputy Minister of Justice. It raised half a dozen major issues, such as subsection 24(1) which was a major issue. The aim was to see if all the deputies could then agree upon certain bases, not of all the defences, but more properly our responsibility of trying to isolate the issues where administratively we could approach the major issues so as to make it work smoothly and lead it through the process where courts would determine major judicial issues.

That was all done and that paper was distributed and discussed. Generally speaking, we all accepted it as the right approach. In the administrative area generally, all of us had reservations about various legal positions on it.

All of that came back then and it was refined down and we started to provide background in the ordinary educational system for staff in the ministry. This material was used, but—and this is what the Attorney General has pointed out—an awful lot of the stuff came from lawyers all across Canada engaged in these areas. We can't very well sort of distribute it and print it without their consent. As a matter of fact, the material doesn't indicate the authorship now because they just put the stuff together to prepare the paper.

In that context, I have no objection to the thought that some time it could be put together and edited, getting whoever's approval to put it together into some kind of a volume. The Attorney General mentioned this earlier on.

The problem was we would then be competing with the private sector booksellers and so on. Also, could we do the validation of the copyrights?

That is the background. It was all in good faith and ultimately it was approved of by the Deputy Minister of Justice in Ottawa. As a matter of fact, he was quite laudatory in his

comments to Rod McLeod and the fellows who put it together because of the quality of work that was done for us.

Mr. Breithaupt: It's almost a shame to have that writing lost or not useful to the society at large if there is a way of having some agreement of publication or availability as another text in the ongoing march that is going to produce, no doubt, quite a few books in the next few years.

Hon. Mr. McMurtry: I hope it won't be lost. As the deputy mentioned a moment ago, some time ago I suggested that the ministry publish as much as it could of it in order that it would not be lost. Now it may happen, as I say. I know some lawyers within the ministry have been working in this area and I expect it will all become very public, that which is useful, as a result of publication in the relatively near future, in the ensuing months.

Mr. Renwick: I would like to make, if I may, Mr. Chairman, a brief comment, stepping on to that hate literature one. I would mention an article which appeared in the Toronto Star on March 20 this year at the time of Dr. Arnold Shulman hearing the tape of that sermon delivered by Rev. Paul Melnichuk, the pastor of the Faith Cathedral. It was a very fine article which appeared in the Star, particularly fine because it carried a picture of the Attorney General.

It was obvious from reading this article that Mr. Takach and a number of others had both listened to the tape and had given very serious consideration to the question—I'm trying to speak divorced from that particular tape—in relation to the hate literature provisions of the code as to whether it was or was not an offence. I would assume that there must have been some kind of internal ministry paper prepared setting out what the pros and cons or what the possibilities or what the deficiencies were with respect to the provisions of the code.

I'm only going by this particular article because Mr. Takach is quoted as saying that three or four people in the ministry had viewed it, thought it was extremely offensive and raised the question that there was a religious cloak to it of some sort. You, sir, had raised the question, a matter which, off and on, I've tried to get some interest in, of whether or not there isn't some way in which our libel and slander laws could be adapted to provide some form of civil remedy as well.

I'm wondering whether or not that kind of background paper is in sufficient kind of form

that someone in the ministry would publish something, because there is an immense concern.

This is hate literature, and everyone has his own perspective on what hate literature is, but there is an immense concern that, really, the Criminal Code provisions are pretty useless or that perhaps they are at the point that they should be either reconsidered or even perhaps repealed, as Alan Borovoy would like to see them, I think it's fair to say. He doesn't think that's the way you should go about it.

Am I right that there is some such paper? Without necessarily relating it specifically to this, is it possible that someone in your ministry could take the time to issue a ministerial booklet of some sort on the question of hate literature so the public will understand what it is?

5 p.m.

Mr. Breithaupt's colleague, Mr. Sweeney, raised the question of the separate school issue in the assembly today. He felt very deeply about the offensive nature of the booklet.

Hon. Mr. McMurtry: Which was that?

Mr. Renwick: I think a lot of people are misled and feel helpless when this kind of attack erupts at a particular time. You know as well as I do that it can suddenly erupt, even though it may not be quite as heightened as it was when the hate provisions went into the Criminal Code. Is there anything that could be done along those lines?

Hon. Mr. McMurtry: I think it is a very important issue for discussion. I cannot recall what material we have. I carefully read the transcript of the tape and was involved in quite a vigorous debate within the ministry.

Mr. Renwick: Yes, I would assume so.

Hon. Mr. McMurtry: At one time, I must admit, I leaned towards prosecution in the case. But taking into consideration the public issue component, and the fact there was this veil of religiosity and that he did apologize, the criminal sanction is a fairly heavy sanction for this type of problem.

This is why philosophically people like Alan Borovoy sincerely believe this should not be part of the Criminal Code. There have to be other remedies other than the criminal sanction for this type of antisocial behaviour.

Mr. Renwick: Let me just put the two sides to it. This is the article by Liane Heller which appeared in the Toronto Star on March 20. It says this:

"But Ontario Attorney General Roy McMurtry

has not been reluctant to comment. He has called Melnichuk's sermon 'hate propaganda. . . in the general sense.' And he told the Star in an interview he considered the sermon 'disgusting and revolting.'

"But McMurtry isn't prepared to take legal action. Apparently, what Melnichuk said isn't illegal. The sermon may meet McMurtry's definition of hate propaganda, but not the definition of the Criminal Code of Canada."

If the chief law officer of the crown expresses what every thinking or sensitive citizen in the province would feel, but nothing can be done about it, it seems to me that a white paper, or whatever you wanted to call it, issued by the ministry to reflect upon that contradiction would be very important to people.

When it erupted in my riding about two years ago—fortunately it hasn't recently—everyone sort of threw up his hands and felt that nothing could be done about it. I do not think that is good for the law and I do not think it is good for the understanding of the citizen.

Hon. Mr. McMurtry: As I say, I was personally involved in several discussions about this. I do not know about any material. We had a number of discussions about various sections of the Criminal Code, quite apart from the public policy considerations. They weighed against the prosecution, quite apart from the technical obstacles that may have been in the way of a prosecution.

Mr. Takach, would you like to address this particular issue?

Mr. Takach: I think the key issue was that we felt there was—

Mr. Chairman: Excuse me, could you perhaps come to a microphone?

Mr. Takach: The key issue is that we felt there was, in this particular case, a technical obstacle. In other words, in this case there were probably not reasonable and probable grounds to recommend to the police that an information be sworn. It had to do with that very crucial and essential element, which really is at the heart of a comment you made, Mr. Renwick, a few moments ago about the public's misconception or misperception about what the offence is.

The technical element that prevented us recommending that a proceeding be instituted was that essential element of intending to wilfully promote hatred against an identifiable group. In other words, there is a distinction to be noted between making grossly offensive statements about an individual or group of individuals that

fall within the definition of identifiable group, and a situation where those comments are made with the full intention that hatred be promoted against that group.

It was in this context that we felt the technical element was lacking. It is more than a technical element; it is an essential ingredient of the offence. More particularly, in this case, the gentleman in question was seeking, albeit in an inappropriate manner, converts to his way of thinking, his religion, without giving full thought to the consequences of so doing and abusing the group in question, as an example.

Even assuming we had been perhaps a little more sure about the requisite element being present, this case, as the minister has said, may have been one in which public policy or the public interest as a whole would preclude a prosecution from taking place. We took into account that he was a so-called one-time offender, that a pattern of that conduct had not been displayed and there were also the religious overtones to it. There were also a couple of other factors which escape me now. There were the twofold reasons for not proceeding.

I would like to return to your original comment, which in my view is an appropriate one, that the public does not understand the difference between grossly offensive statements and statements which are specifically designed and calculated to get people in general to hate another minority group, religious group or identifiable group that falls within the category as set out in the Criminal Code.

Very often people do not understand how it can be hateful literature in our terminology or in common parlance, and yet not qualify under the provisions of the code. Sometimes that is difficult to get across to the offended group, which feels very upset—and that is an understatement—about the comments directed against them. They cannot understand why no prosecution should be instituted. As offensive and as tasteless as the comments are, it is apt to the requisite element of the offence.

The minister mentioned earlier that there is a scarcity of judicial authority on it. There have been a few cases, but there was one lead, main authority in Ontario that dealt with this issue in the Windsor area. Certain francophones handed out literature that resulted in charges being instituted, and the minister consented to a prosecution.

Once all became clear, it was determined that it wasn't the English-Canadian group that was disseminating and communicating statements

of anti-French sentiment; it was certain members of the French-Canadian community who were trying to arouse fellow members of the French-Canadian community to fight for a separate school.

That case resulted in a couple of very important pronouncements by the Court of Appeal as to the very essential element I referred to at the outset—that intention to wilfully promote hatred.

5:10 p.m.

Mr. Renwick: Some explanatory brochure or some study paper by the Ontario Law Reform Commission would go a long way to help the public understand the problem.

Hon. Mr. McMurtry: I think that is a good suggestion. It is a great problem for us.

Mr. Renwick: Every time it comes up you will get some version of this article—how everyone is disgusted by what has been said but for some reason nothing can be done. I think the public should know that, otherwise their anticipations will be higher than the law allows them with respect to a remedy.

I will not repeat this when we come to the law reform commission vote, but I am interested in the law reform commission looking at the question of whether or not it is possible that the Libel and Slander Act could somehow or other take this kind of thing into account.

If a particular defined group was slandered, and if I was a member of that group and I could establish that I was a member, I should be able to bring an action. Or, if and when there is a class action operation available, I—as a member of the class on behalf of myself and all other members of the class—should be able to bring an action. If the criminal law, with the justifiable difficulties of the protection of the citizen against conviction cannot do it, often the threat of a monetary penalty of some sort is sufficient to dissuade persons from making that kind of statement.

If the tape of Mr. Melnichuk was as it was said to be—particularly because it was a tape that was distributed—and if the police took some action, I am quite certain it would act as a damper upon that kind of activity. Anyway, I think it would be a useful thing for the Ontario Law Reform Commission or someone in the ministry to look at.

I have been interested in this for a long time because of my own riding, and the ministry knows that.

Hon. Mr. McMurtry: It might be a good vehicle. As Mr. Renwick mentioned, I can

recall that at least five years ago, there was a Geneva Park suggestion that the libel and slander laws be broadened to allow this kind of class action in this area. Unfortunately it provoked only opposition to the idea.

Maybe if you had said it instead of myself, it would have garnered a little more support. The only expressions I provoked or motivated were of opposition.

The law reform commission might be a good vehicle. Your suggestions are always very helpful. I should like to remind the member for Riverdale that, during the estimates while I was Solicitor General, we talked about a commission into fire safety in high-rise buildings.

Mr. Renwick: It finally came about.

Hon. Mr. McMurtry: It emanated from your suggestion at the estimates of the Solicitor General. It took a little while to get it on their list, but it finally happened.

The next matter raised by Mr. Breithaupt—I appreciate his support for our initiatives—was the French language in the courts. We have continued to make progress in that area. We are designating a number of additional areas for April 1, 1983, for additional courts.

One of the helpful and very encouraging results is the formation of the French language lawyers' association, which had its third annual meeting in Ottawa recently. I have been happy to attend all three of them.

Our co-ordinator of French language services, Mr. Etienne Saint-Aubin, is here. He has provided considerable leadership and dedication to this project, and he, as well as I, will be available to discuss any of the issues you might like to discuss in relation to the progress we have made with respect to French language services in the courts.

We have, I think, demonstrated continuous progress, given our available resources. What is particularly encouraging is that our French-speaking lawyers have become very enthusiastic in the last several years with respect to promoting the use of the French language.

We recognize that there are several obstacles, one of the major ones being that most of our French-speaking lawyers were educated at English-speaking law schools. While they may be fluent in French, pleading in French does provide some special challenges.

But the association, under the very dedicated leadership of M. Robert Paris of Ottawa, has worked closely with us in developing these initiatives. One of their important initiatives, with our assistance, has been the development

of a translation centre in conjunction with the University of Ottawa, quite apart from the translation of our own provincial statutes which we are doing here.

Their translation centre is very helpful. Booklets in French, which have just crossed my desk recently, have been published on family law reform, accession law reform; not just the statutes, which have been translated in any event, but explanatory texts in relation to these important reforms. I am personally very pleased that the momentum is being maintained.

The next item was the issue of censorship, and particularly child pornography. We certainly strongly supported the inclusion in the federal Criminal Code of some specific sections dealing with child pornography, which did not become part of the recently amended Criminal Code; it ran into some difficulty in Parliament. We continue to support the inclusion of these sections because we are very concerned about the increase in the distribution and manufacture of this type of material.

The whole issue of censorship is again, of course, a very delicate one. We have run into the same issue of freedom of expression and the extent to which a government or the state should place any curbs on freedom of expression.

There is no actual joint study between the ministries of the Attorney General and Consumer and Commercial Relations. I have suggested to Dr. Elgie that the work of the Ontario Board of Censors be reviewed on a relatively regular basis by some committee of this Legislature in order that the public can be assured that the board is discharging its responsibilities in the public interest.

There is no question that, while no one feels comfortable with the concept of any censorship, when one sees the highly exploitative material, particularly in the context of brutality against women and children, one recognizes there are no easy solutions. I personally do not believe that abolishing our censor board is the way to go. That is a matter that may or may not be discussed in the estimates of that ministry, which I think are still ongoing.

5:20 p.m.

Mr. Breithaupt: It so happens it was discussed the afternoon after we opened our estimates here. It is interesting to have both ministers discussing the same subject on the same day, something one does not often see.

I think the concerns Dr. Elgie expressed are not unlike your own. Perhaps it is appropriate to say here that the difficulties, particularly with

the matter of violence to women and also the abuse of children in these matters, are obviously an ongoing public interest. When it comes to those particular issues I am certainly quite prepared to draw the line on freedom of speech. As one otherwise not much interested in censorship as a principle, I am certainly prepared to deal with those topics.

There seems to be a need for some joint project between your ministry and that of Consumer and Commercial Relations to encourage, by education, an awareness of the particularly abhorrent items that are even submitted for public distribution, which I believe that our society has every right, and indeed reason, to prevent.

Hon. Mr. McMurtry: It is obviously an issue that has to be discussed around here; and the more discussion the better, because it is clearly not conducive to any obvious or simplistic solutions.

I was naturally very surprised that Mr. Breithaupt raised the issue of freedom of information. I thought he might want to keep that for the provincial secretary's estimates.

Mr. Breithaupt: Did you think I might gloss over that at this time? I am told you have an involvement in all this, or certainly an interest in the subject, so I thought I might as well raise it here too.

Hon. Mr. McMurtry: Everyone in the cabinet has an interest in the subject. I have said I have publicly, and I also hope that this legislation will be introduced shortly. We had expressed some concerns with respect to the issue of confidentiality of police intelligence and that area, and again wanted to proceed in such a way as would not discourage police from free exchange of information in this very sensitive area, in the fight against organized crime.

I would expect that we shall see something introduced in relation to freedom of information in the not too distant future. I suppose all the relative preoccupation with some bills, such as Bills 179 and 127 and some of the other issues, may have contributed to the delay. We certainly expect it to surface in the fairly near future.

As to preliminary inquiries, again, in my opening I simply said that I think Mr. Justice Martin's committee report is worth reviewing. It is a very difficult issue, inasmuch as the perception that any of the traditional safeguards might be jettisoned in the interest of expediting trials is an issue that we have to address.

What we have been attempting to do, of

course, in recent years is encourage crown disclosure, full disclosure, in order to avoid the necessity for some of the prolonged preliminary inquiries and we have had some modest success in this regard.

One of the issues we have to continue to discuss is the extent to which witnesses, particularly victims, are in many cases subjected to what amounts to two full-scale trials, at least in their minds. A preliminary hearing is not a trial, but it doesn't occur in any other jurisdiction. I recall discussing with the well-known Harvard criminal law professor, Alan Dershowitz, what he thought about our own process as far as preliminary inquiries are concerned. He actually expressed some surprise as to the extent to which we can in effect go through most of the evidence twice in a courtroom, quite apart from any order for a new trial.

The perception that some traditional safeguards may be jettisoned in the process is now basically one that has to concern us. However, I have said on many occasions that I think members of the bar have to be very concerned that they participate and that they look actively for some solutions. Lawyers tend, for the most part, to be traditionalists. In many respects that can be a very good thing, but occasionally, and I am not suggesting necessarily in preliminary hearings, our preoccupation with traditions can sometimes override rationality.

Mr. Breithaupt: Even the use of television in the courts I think brings forward that balance of views as to what is appropriate, what is useful, and what can be innovative in those kinds of circumstances.

Hon. Mr. McMurtry: What I have said to many of our colleagues at the bar is that the private bar has to participate in looking for solutions, not simply marshalling all their resources to maintain the status quo.

Mr. Breithaupt: We are just having more of the same.

Hon. Mr. McMurtry: Some federal government may just decide they are going to bring in some quite draconian alternatives which may not make us or anyone else very happy. I just continue to express the hope that the private bar will participate fully in looking for solutions and viable alternatives. I think if they become preoccupied with the status quo they may be a little disappointed down the road as to what may happen, because the present system is not really totally satisfactory.

So far as the report of the committee of Mr.

Justice Martin is concerned, we think it is an important document. We are not wedded to it as a ministry, as a government, but we think it should form the basis for a lot of, I hope, positive discussion.

I am sorry that we did not have our visit to the unified family court. I had quite an interesting visit to the unified family court myself a week or so ago for the first time in a while, and I think the idea of a visit to one of our provincial civil courts perhaps some time in the new year is a very good idea.

5:30 p.m.

Private police forces: this is largely within the jurisdiction of the Solicitor General, but we have to be concerned about it in this ministry as well. We do not see it as a major problem at present. There is no question that, given the nature of society today, particularly in times of economic problems, the need for certain companies to provide increased security over and above what can be provided by local police forces is understandable, but it is something we have to be concerned about.

One of the most disturbing developments in relation to the issue of private police forces was the training of some of these killer dogs to patrol, with the danger that relatively innocent people, particularly children, could be very seriously injured. We have to maintain a high degree of vigilance.

So far as surrogate mothers are concerned, you may have noticed the Ontario Law Reform Commission published terms of reference which we forwarded to the commission in October. If anyone would like copies of these terms of reference, we could arrange to have them duplicated. The commission has already advertised and I think it will be an interesting challenge for them.

The first matter Mr. Renwick raised was his request for a status report on our native peoples in Ontario. I have asked Mr. Blenus Wright, the director of the civil law section of our ministry, who is presently engaged in a major trial concerning the Temagami land claims, to give us a status report. I think he will be able to give us a fairly extensive status report, although he only had overnight to prepare this material.

Mr. Wright: Mr. Chairman, I do not know how much I should comment on the matters before the court. Perhaps Mr. Renwick can help me as to exactly what information he may want on the Bear Island and Temagami matter. It has been proceeding in court for six weeks. The

case is now adjourned until at least December 13 and it depends upon what documents are produced at that time as to whether we continue on December 13 or adjourn again until the beginning of the new year.

Mr. Renwick: The matter started when Frank Callaghan was the deputy minister. When do you anticipate that the trial will be concluded?

Mr. Wright: I have no guesstimate. It is going to go on for weeks.

Mr. Renwick: So it will be here next year when we come back?

Mr. Wright: I would think the trial should be over before summer, but most likely there will be appeals all the way to the Supreme Court of Canada. It is going to be some time before there is an ultimate result.

Mr. Renwick: So from the point of view of both parties, it is a major case.

Mr. Renwick: It is a major case, yes.

Mr. Renwick: All right. The second one was the—

Mr. Wright: The Skerryvore Ratepayers' Association and the Shawanaga band of Indians. This is a matter where all three counsel are pursuing—

Mr. Renwick: What is the issue?

Mr. Wright: The issue whether the road going through the Shawanaga reserve is reserve land or a public road. The section in the Municipal Act says that all roads running through reserves are public roads, but it is a question of the constitutional effect of that particular legislation and tracing it back and applying it to the various facts on the road.

Mr. Renwick: What stage is it at?

Mr. Wright: We are gathering together all of the historical documents which would be applicable to the issue. We hope the counsel acting for the ratepayers, the federal government counsel acting for the Indians, and we acting for the Attorney General can agree on the facts so we will not have to go through discoveries and we can just go to court to have the issues determined.

Mr. Renwick: Right, and the next one was the Eagle Lake band.

Mr. Wright: The Eagle Lake band matter is with reference to the extent of the boundaries of the reserve of the Eagle Lake band. Treaty 3 gives this band its reserve, which does not include the land underneath the waters between the projecting headlands.

Mr. Renwick: This is the headland—

Mr. Wright: This is the headland to headland cases. One of the problems you face when you are in this type of litigation is the jurisdiction problem between the federal court and the Supreme Court of Ontario. It is our view that you cannot sue the federal government in the Supreme Court of Ontario with respect to treaty issues. Therefore you have to determine which court you commence your action in.

That has been some cause of concern to plaintiffs and we are now waiting for an amended statement of claim with respect to that action.

Mr. Renwick: So that case, as well as the Skerryvore case, will be a lengthy case as well?

Mr. Wright: Very lengthy cases, yes; hopefully they will not be as lengthy as the Temagami case.

Mr. Renwick: And Cheechoo?

Mr. Wright: We have recommended to our client, the Ministry of Natural Resources, that we not go ahead with the appeal on that matter. It involves one Treaty 9 Indian hunting on the trapping rights of another Treaty 9 Indian, and the Ministry of Natural Resources laying a charge with respect to that. But the Taylor and Williams case in the Court of Appeal, the criteria used for the interpretation of treaties, basically gives the Indians the benefit of any doubt.

Therefore, it appears that, by reason of section 88 of the Indian Act, there would not be much basis for saying one Indian did not have a right to trap in this particular area, although the Ministry of Natural Resources had tried to divide up the area and had given licences to the various Indians. We have recommended that we not proceed with that particular appeal.

5:40 p.m.

Mr. Piché: In this case you are talking about—Cheechoo versus the Queen—what area is Mr. Cheechoo from?

Mr. Wright: That would be Treaty 9. This was in the district court at Cochrane. I do not know the exact area.

Mr. Piché: But it was in the district of Cochrane?

Mr. Wright: Cochrane, yes.

Mr. Renwick: And the Maracle case?

Mr. Wright: The Maracle case is sort of in limbo at the moment. There are two separate actions. There was a question of whether Mr. Maracle, who has a store, etc., on the Tyendingaga

reserve in the Bay of Quinte area, was liable to pay tax under the Tobacco Tax Act. The minister made an order under that act where he thought that certain taxes were owed. As a result of that order, certain files, a safe, etc., were seized.

The question arose as to whether the private personal property of Mr. Maracle, which was contained in that safe, was subject to seizure by reason of section 89 of the Indian Act. There were judicial reviews as to the authority of the minister to make his order, etc.

That has all been resolved, but now there is the question of the action against the crown for improperly seizing the personal property of an Indian on a reserve, which is exempt from seizure under section 89 of the Indian Act.

In one action, we just have the writ. In the

second action, we are reviewing the statement of claim to determine whether we would bring the issues of law before the court as to whether the crown is in violation of section 89, if it seized the goods while investigating charges under the Tobacco Tax Act.

Mr. Renwick: The next thing I raised, if I remember rightly, was item 6 on the list; the interpretation of provincial obligations related to those sections of the Constitution Act of 1982 which relate to the rights of native people.

Mr. Chairman: Maybe, Mr. Renwick, this is an appropriate time to break. We have private members voting; perhaps we will adjourn at this time. We will reconvene tomorrow morning following routine proceedings.

The committee adjourned at 5:44 p.m.

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Thursday, December 2, 1982

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From the Ministry of the Attorney General:

Dick, A. R., Deputy Attorney General

Takach, J. D., Deputy Director of Criminal Law and Director of Crown Attorneys

Wright, B., Assistant Deputy Attorney General and Director of Civil Law



No. J-13

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Friday, December 3, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with an alphabetical list of the speakers taking part.

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, December 3, 1982

The committee met at 12:22 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

On vote 1401, law officer of the crown program; item 1, Attorney General:

Mr. Chairman: Shall we begin? When we broke yesterday, the Attorney General was still on his reply and Mr. Renwick and Mr. Wright were dealing with native persons' cases.

Mr. Renwick: We have dealt with those.

Mr. Chairman: Were you finished? Thank you.

Mr. Renwick: I am waiting for the Attorney General to give us the remainder of his reply because my colleagues, Mr. McClellan and Mr. Johnston, would like to get on, as I know Mr. Conway also does.

Mr. Chairman: Yes; this is an appropriate spot to make certain comments. We have 10 hours and 25 minutes left and Mr. Renwick, as is his wont, brought forward a proposal for an allocation of the remaining time.

Mr. Renwick: Mr. Breithaupt.

Mr. Chairman: Did I say Mr. Renwick? Mr. Breithaupt, sorry. You just can't tell one pretty face from another.

Mr. Breithaupt has suggested that we could finish with the first vote today and has allocated time—I think he has handed these around at other times—so we would have a fair allocation of the 15 hours.

As Mr. Renwick has just mentioned, we could move on, and I am hopeful we will not have to have an enforced allocation of time by me towards the end of next week.

Could the Attorney General please carry on with his reply.

Hon. Mr. McMurtry: Mr. Blenus Wright was giving Mr. Renwick a status report on some of the important issues relating to our native peoples. That was concluded. Then I think there was a question about the forthcoming first ministers' conference on the Constitution.

Mr. Renwick: Yes, but I can deal with that elsewhere. All I had asked about that was

whether the agenda for the first ministers' conference had been settled yet.

Hon. Mr. McMurtry: It has not been settled to my knowledge. I have seen a draft. It is a very ambitious agenda.

Mr. Renwick: I am sure it must be.

Hon. Mr. McMurtry: Do we have anything here with respect to that proposed agenda that has come from the federal government? Mr. Dick earlier this week attended a meeting of the Deputy Attorneys General. I don't know whether the agenda was discussed at that meeting or not.

Mr. Dick: No, it was not, Mr. Chairman. The agenda that was looked at is one that has been looked at by the civil servants who have been working on the matter, and that was given to yourself and the ministers. I don't know whether you have progressed past it or not.

Hon. Mr. McMurtry: No, but we have no objection to distributing to the committee what is basically the federal proposed draft agenda, if it would be of interest.

Mr. Renwick: I would like to see that if we could.

Hon. Mr. McMurtry: Nothing has been agreed upon, but it could be a good indication of where we are going.

The next item Mr. Renwick raised was a matter he had raised in the Legislature when we repealed some of our mortmain legislation. The question was why we did not pick up the companion issue of monitoring ownership of land by corporations.

We passed on that suggestion to the Ministry of Consumer and Commercial Relations, which thought it was an important issue. I think the Deputy Attorney General has had some recent discussions as to where that stands, if anywhere.

Mr. Dick: Mr. Chairman, as you know, we were responsible in our ministry for the charitable institutions and their land holdings and so on, so we have some knowledge of that, but the area of the corporations was strictly in Consumer and Commercial Relations. As I understand it, they do not at present monitor the land.

Mr. Renwick: Nothing at all.

Mr. Dick: Yes. Indeed, the system by which

they derive the information does not permit of that.

There is the other side of it, which is the affidavit respecting consideration filed under the Land Transfer Tax Act from which information is derived. There has been discussion from time to time about that as a possible vehicle for providing information for monitoring actual land holdings by foreign owners and foreign purchasers.

At the moment, there is nothing in place that I am aware of, except the other ministry has the carriage of it and has been dealing with it in the past.

Mr. Renwick: I have made the point and I am going to repeat it as briefly as I can. The government, for some reason, just simply ignored that part of the law reform commission report dealing with monitoring the ownership of land by corporations, whether they were foreign or not foreign. They also dealt with that question of foreign ownership of land extensively, and yet when we amended the Business Corporations Act the government seemed to have taken a totally hands-off position.

12:30 p.m.

I think it is vital that there be a method by which the ownership of land in Ontario by corporations be at least monitored, if not otherwise. I have made the point and I will have to pursue it with the other ministry.

Hon. Mr. McMurtry: The next item raised by Mr. Renwick was with respect to the Attorney General's lack of response to issues he had raised in relation to Bill 179.

Our law officers for some months have been considering the various options that were debated in cabinet and that led up to the introduction of Bill 179. I'm not at liberty to discuss the various options that cabinet considered, but I know the Deputy Attorney General did forward an opinion to the Premier's office with respect to the constitutionality of the various options that were discussed.

Our law officers are satisfied as to the constitutionality of Bill 179. I don't know what else I could say at the present time.

Mr. Renwick: My only response is that I'll be asking that the same thing be done by the government as they did with the Residential Tenancies Act; that if it is passed, then after it is passed it be referred to the courts under the Constitutional Questions Act to have the question of its constitutionality considered.

With the greatest respect to the law officers of

the crown, I personally am of the opinion that the bill is challengeable in a very fundamental and basic way and it will be challenged. It would be much preferable if the government took that initiative, rather than to require private organizations to take that initiative.

Hon. Mr. McMurtry: Next, Mr. Chairman, was the item Mr. Renwick raised about the 22 South Asian women, which was an issue, actually, that had not been brought to my attention prior to it being raised by Mr. Renwick. I do have a report as to the process that was followed.

I think it was Mr. Renwick's information that on October 7, 22 South Asian female employees were locked out over a pay dispute. According to the information we've been able to obtain, it was on October 13 that the Ontario Human Rights Commission had first notice or information in relation to this issue.

On October 22, I am told, at least one employee filed an official complaint. On October 28 the commission received 14 more official complaints. A member of the employment standards branch of the Ministry of Labour was brought in by the commission to speak with the workers about filing an employment standards claim. On November 29 the Canadian Pizza Crust Co. was served with 15 human rights complaints.

Our best information is that the human rights commission reacted promptly to the filing of each official complaint. The race relations commissioner was notified of this incident and it was his view that the formal complaints procedure should be followed with respect to serious allegations of this nature. The responsibility for carrying out the formal complaints procedure is the responsibility of the compliance division of the commission.

As we've said in the past, it's our view and the view of the race relations commissioner that the proper role of the race relations division is to act on a preventive basis to mediate and conciliate, but that when it comes to very serious allegations such as this, the formal complaints procedure should be followed. Once that is terminated, it may well be that the race relations division will have a role to play in the future so far as this particular company is concerned.

We underline the fact that these complaints are treated as very serious allegations and the formal mechanism appears to be the appropriate route to follow at this time.

Mr. Renwick: My point was a relatively simple one. There was a tremendous gap between the rhetoric of your opening statement with

respect to the race relations concerns of the government and the actuality of what took place.

I was aware of the intermediate date, but for practical purposes there was no movement in any serious way by the human rights commission or the employment standards branch until the matter was raised in the Legislature by the leader of the New Democratic Party last Friday morning, after we had met with some of the representatives of the women who had been discharged and who vented their frustration to us that they could get no action of any kind from the government.

I notice that November 29 was the significant date. That, of course, was a couple of days afterwards. I know that the Minister of Labour (Mr. Ramsay) then took an initiative and had Mr. Sparling work out some arrangement to meet with the company.

I expect an announcement will be made. I was simply pointing out two months is too long.

Hon. Mr. McMurtry: My information is somewhat different from yours, Mr. Renwick. The information I have to date is that the human rights commission did act promptly in this matter and that this was treated as a very serious matter. As I say, the human rights commission is in the Ministry of Labour, but obviously it is of great interest to our ministry because of the priority we've given these issues. It is something we're going to follow through.

The next item raised was legal aid clinics. I don't recall now whether there was any specific point you wanted to question.

Mr. Renwick: No. I said we would deal with that when we come to legal aid; it was just to support your statement that day.

Hon. Mr. McMurtry: The records of the Canadian Johns-Manville Co. Ltd. that you had been told were in Denver, Colorado, are, we understand, within Ontario. We are informed by Mr. Paul Hess, the director of legal services, Ministry of Labour, that the past personnel records of the employees are located in offices on the West Mall in Etobicoke. The Ministry of Labour staff are currently negotiating for access to these records, which seems to be the principal issue.

There is a second issue relating to what ways and means may be available of ensuring that a foreign-owned corporation maintains sufficient assets in Canada to meet any future Workmen's Compensation Board claims against that company. Of course, private sector employers in

Ontario do pay premiums to the Workmen's Compensation Board fund annually.

I will keep you advised the best I can, Mr. Renwick, of just what success or otherwise the Ministry of Labour is having in negotiating access to these records.

Mr. Renwick: There is a series of unanswered questions. Not all of them fall in your jurisdiction, but we will be pursuing that question. Thank you.

12:40 p.m.

Hon. Mr. McMurtry: The next question was the financial negotiations with the federal government in relation to the young offenders legislation. I don't know if the Deputy Attorney General has anything to report on that, but we've had some difficulty getting any commitment out of the federal government.

Mr. Dick: If I may, Mr. Chairman, this was one of the things the Deputy Attorneys General were discussing with the federal representatives in Ottawa in the last few days.

As you know, the costs have been a very significant factor in all the provinces. At one point all of our material was provided to the federal representatives. They have now prepared a compendium of costs as they see it. At the discussion we had with the Deputy Solicitor General and the Deputy Minister of Justice in Ottawa in the last couple of days, most of the provinces disagreed with the way their costs have been translated in that process. I wasn't there yesterday, but the people who were there, Doug Ewart and Rod McLeod, are back this morning.

It would seem there is still no definition by the federal government of what the cost proposals will be. It is something that is before that government, but they had no information to provide to us at the present time. That has been the state of affairs pretty well since the introduction of the act.

The only observation that has been made that still seems about is that we may have to have some experience before they will be able to ascertain the nature of the real increased cost to the provinces. At the moment we have been maintaining that the costs will be substantial, both in the operating and in the capital aspects, because of the nature of all that is represented in that act and in adapting it to our particular system of the administration of justice.

Mr. Renwick: What is the latest information on the date it is to come into force in Ontario?

Mr. Dick: The date that was confirmed this week was October 1, 1983. They say to us now that is the final date.

The Premiers, at their meeting in Halifax this summer, indicated they felt that it should be postponed further until the cost matter has been discussed and some arrangement has been arrived at, but the date we are now given is October 1. The 16- and 17-year-old inclusion would be in 1985, as set out in the act.

Hon. Mr. McMurtry: The next issue that was raised by Mr. Renwick was the relationship between the Ministry of the Attorney General and the gay community.

I have to say that one of the most troubling issues I have had to deal with during the seven years I've been in this position is the allegations that the Ministry of the Attorney General is something less than sensitive about any unfair activities relating to the police and the gay community, or that we would be indulging in some type of harassment by prosecutions related to the Body Politic magazine and the unhappy situation relating to the found-ins of the bathhouse raids.

Knowing the sensitivity of the members of my ministry in this area with respect to individual rights, it is to me personally a very distressing allegation because I believe it to be unfounded and totally unfair. It does distress me that the allegation continues to be made.

I understand that there were two separate prosecutions relating to the Body Politic magazine. One prosecution, I believe, just recently led to an acquittal with respect to a particular article. I am not totally familiar with the article, but there was an acquittal. I am instructed there is no recommendation in relation to any appeal in that matter.

The issue that has caused most of the controversy and attracted most of the attention is the issue of the Body Politic magazine relating to the article "Men Loving Boys Loving Men," which is now presently before the Court of Appeal. I had hoped it would be argued before Christmas. I understand it will not be argued before February, largely because of the very busy schedule the lawyer, Mr. Ruby, has. He is not available to argue that case before February. We would have been prepared to argue it before that time.

Obviously I do not want to debate the issue here as it is before the Court of Appeal, but there are very serious concerns with respect to the judgements in that case which, in our view, created an enormous amount of confusion with

respect to the present state of the law. I think it must be clarified in everyone's interest.

I am looking at a note I have here from my director of crown attorneys to see if there is something I may have left out that might be pertinent.

There are two issues related to the magazine published by the Pink Triangle Press: the one that is before the Court of Appeal and the other case that was not appealed and is not going to be appealed.

We are still checking the statistics with respect to the issue of the found-ins so far as the bathhouse raids are concerned, and we certainly are not in a position to dispute or affirm the figures that Mr. Renwick presented. We will be able to provide further information during the course of the estimates.

As he has pointed out, there was no issue about certain of the bathhouses being found to be bawdy houses within the meaning of the Criminal Code. The issue in relation to most of the trials of the found-ins was the inability of the police to actually identify specific accused by the time these cases came to trial. There was no real legal issue as to whether or not these houses were bawdy houses within the meaning of the code.

At the time of these raids the police did not arrest the accused, in the sense that they were not detained other than to sign a promise-to-appear notice. They were detained briefly at the scene of the raids, I am advised, and then released almost immediately. This, obviously, was irrelevant to whether or not the police would be able to identify individual accused by the time the case came to trial, and that was the principal issue.

Whether the charges, first, should have been laid goes without saying, as I have repeated on other occasions. I had no knowledge of this matter until I read about it in the newspaper. The issue facing the police was whether or not, when the law prohibits certain activity, they are simply going to ignore this activity for fear of being accused of harassing a minority. There can be no question but that courts have found that it was an unlawful activity.

12:50 p.m.

It would be very difficult for any police force anywhere to take the position that because it involves an issue that is bound to provoke some public controversy they are therefore going to ignore this law-breaking. There are obviously people in the public, both within and outside the gay community, who simply think the Criminal

Code should be altered to remove the unlawful nature of that activity, but it is not for the police to change the Criminal Code; that's for the Parliament of Canada.

On the issue to as whether or not, having laid all the charges, the crown attorney should have simply withdrawn or not proceeded with the charges, I do not think that would have been responsible in the circumstances. There really was no issue as to the unlawful nature of the activity which was taking place by a large number of people. For the crown attorney's office here in Toronto to simply say that it was not going to proceed with this type of charge, notwithstanding the unlawful nature of it, because of controversy that would be engendered, I don't think would have been a responsible position to adopt.

This initiative has troubled a number of people and I am well aware of that. I certainly am prepared to deal with any additional concerns Mr. Renwick wants to bring forward with respect to any allegations of police harassment.

Mr. Renwick: We can deal with that, perhaps; however, in the short time that is available, on the one question, the point I raised a year ago after the charges were laid with respect to being found in: I asked you to consider, in the light of the very wise statement you made at the time you decided not to pursue the prosecution of Mr. Francis Fox, to use the discretion you exercised at that time, which I thought was completely appropriate in the same situation; but you chose not to do that. Then I find, if the figures I gave you the other day are substantially correct, there were 275 acquittals; 36 guilty pleas, and likely it will be found that many of those where simply guilty pleas and not convictions after trial; two are still before the courts; and another six are being processed.

To have put the individual citizen to that expense, to have created that anxiety for the persons concerned, and to have put the system of justice to that expense, as well as clogging up the court process with it, seems to me to be a reflection on the capacity of the crown attorney in the case, and yourself in particular, to have exercised that discretion.

The question which led to the acquittal of that number of people would indicate a very serious problem with respect to the discretionary right of the Attorney General and of his agents, the crown attorneys. I shall be interested to receive the exact figures.

Hon. Mr. McMurtry: I want to repeat once again, because I think it is important, that there

be no misunderstanding about that, that the reason for the acquittal is not related to whether or not the activity is unlawful. It was because of the inability of the police to identify the individual accused. If the police, in order to strengthen the likelihood of identification, had placed each of these accused under arrest and had taken them to a police station and had detained them for a lengthy period, or a relatively lengthy one, so they could be confident they could identify them once they came to the trial, then I would have thought there would have been a great deal of criticism of the police for detaining these people for an unnecessary length of time.

The fact that they were released at the scene led to the difficulties in respect to identification. When the local crown attorney was faced with a situation such as this, then I might say the local crown attorney's office was concerned about the unfair, unnecessary—perhaps I might put it this way—embarrassment to the individual accused in his place of employment or elsewhere and went to great trouble, I think, to express in the courtroom the hope, the wish, that the media use great restraint and not publish the names of the individual accused because the publication of the names and the embarrassment that could be caused therefrom could be an imposition of a more severe sentence than any fine that might be levied.

I think the local crown attorney's office, with our encouragement, did show a high degree of sensitivity in that respect. For the local crown attorney's office to withdraw all of these charges would, in effect, be saying to the public as a whole how could the local crown attorney really proceed on any inmate charges at any time if it just decided to withdraw all of these charges? What reason would the local crown attorney's office give for withdrawing the charges? To say, "We don't want to cause unnecessary embarrassment to the individual accused, or to risk that, and therefore we are going to withdraw all these charges," would be, in effect, saying to the public, "Notwithstanding the Criminal Code, we are going to ignore any charges the police may want to lay with respect to that particular breach of the Criminal Code."

In my opinion, that would be the effect of the crown attorney's office taking that position. For the local crown attorney's office to decide that a certain section of the Criminal Code is not going to be enforced goes beyond the jurisdiction of that office.

Mr. Renwick: You and I could probably argue this for a long time. I want to make this

simple point about which there was no question whatsoever. Your carefully prepared statement in the assembly here, which has been used as a model elsewhere, on the basis on which you elected not to proceed against Mr. Francis Fox, was that there was no question whatsoever that the act involved in that case was an unlawful act and there was, of course, no question of identity in that case.

I am not arguing that. There is absolutely no question that if there is a provision of the code that being found in a bawdy house is an offence, whether you like it or I like it is irrelevant. In the identical situation the crown chose to exercise a discretion; in this case it did not. That would have been fine if, as a result, any significant numbers of convictions had been obtained. But to arrest that number of people, whatever the motivations of the police may be to treat them easily or those of the media may be, and then to have the court system come up with 275 acquittals while the numbers who were found guilty were 36, I think — although the majority of these were likely guilty pleas in order to eliminate or avoid or shorten the embarrassment — seems to me to be a serious default in the matter.

I am not trying to get the last word and we could argue it for some time, but I think it would have been a wise and proper occasion for you to have exercised your discretion. I am not arguing the main issue. The question of whether or not the bathhouses were or were not bawdy houses is a separate, distinct and substantial issue. Again, that is not a question of your moral values or my moral values but the wisdom of it. It has certainly created the impression amongst

the members of the gay community that they are going to be put to significant inconvenience, embarrassment, whatever you want to call it, because of it. From the point of view of the administration of the courts, I think the crown was at fault to have put the court process as well as the individuals to that expense, particularly when the courts in Metropolitan Toronto have very heavy case loads.

Mr. Chairman: Thank you, Mr. Renwick. I think that is an appropriate time to stop. It is one o'clock. I have checked with the Attorney General's people, and Mr. McClellan and Mr. Johnston could come under vote 1401(1) easily and Mr. T. P. Reid could come under vote 1401(3). Would the rest of you please, between now and next Wednesday, sort out what cubby-hole you wish to come into?

Hon. Mr. McMurtry: Could I just raise another issue while you are discussing that? I will be unavailable next Friday and I thought that perhaps I should make mention of this for the number of out-of-town members, should this have any bearing on the committee's schedule for next week.

Mr. Chairman: Since Friday is the shortest of all, should we not dispense with a meeting on that day? Fine. One other thing to point out is that there is a supplementary estimate that would fit in after vote 1401(5) or as part of it. It is the \$1 million supplementary estimate.

Mr. Conway: You can put me in at vote 1401. The committee adjourned at 1:03 p.m.

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Renwick, J. A. (Riverdale NDP)

Treleaven, R. L.; Chairman (Oxford PC)

From the Ministry of the Attorney General:

Dick, A. R., Deputy Attorney General



No. J-14

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Wednesday, December 8, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 8, 1982

The committee met at 9:56 a.m. in room 151.

After other business:

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

On vote 1401, law officer of the crown program; item 1, Attorney General:

Mr. Chairman: Shall we reconvene? It is 10:19 a.m. We are in the middle of vote 1401(1) and we have nine hours and 45 minutes remaining. The Attorney General is wrapping up his reply. I then have Messrs. Conway, McClellan and Johnston on 1401(1) and Mr. Reid on 1401(3). Those are all I have on my list.

Hon. Mr. McMurtry: First, Mr. Chairman and colleagues, I would like to apologize for being late. The Deputy Attorney General and I were called to an emergency meeting a little while ago and the deputy is still there. It could not be avoided.

Mr. Conway: You tease us with that.

Hon. Mr. McMurtry: It was of no political interest, of course. The one matter I had was Mr. Renwick's comments with respect to therapeutic abortions and the Criminal Code and the announced intention of Mr. Morgentaler to establish a clinic.

I had a brief statement I was going to make, but I have given it some thought and I would like to make perhaps a little more detailed statement about some of the principles, particularly as they relate to crown discretion. I will be ready to give that tomorrow. I've done a little draft, but I think it requires a little more work. Given the importance of the issue, I would like to do that tomorrow afternoon.

Mr. Breithaupt: Are you planning on making that statement in the House?

Hon. Mr. McMurtry: No. I was going to make it here.

Mr. Breithaupt: I just wondered which it was.

Mr. Renwick: We must have a first somewhere along the line.

Mr. Breithaupt: This will certainly be a first step, and I'm sure the place will be well attended.

Hon. Mr. McMurtry: I don't want to create an

unrealistic level of expectation and anticipation, but I want to—

Mr. Renwick: We are not expecting you to change course.

Hon. Mr. McMurtry: —take some real degree of care with my response and I am not quite satisfied at the moment in relation to the draft I have prepared. I want just another evening to look at it.

Mr. Chairman: That completes your reply?

Hon. Mr. McMurtry: Yes.

Mr. Chairman: We have left, gentlemen, the wide-ranging discussion and we shall now restrict ourselves tightly to vote 1401, item 1. Thank you.

Mr. Conway: Mr. Chairman, I was going to deal with the first vote. I sat in on some of these discussions and I wanted to share some observations with the Attorney General and to raise a couple of specific questions that I think are most easily and succinctly put under the first item of the first vote.

In so doing, I wanted just to touch upon some of the remarks of the Attorney General's opening statement because I think it deserves some comment from those of us who are not normally involved in the estimates of the Attorney General. I want quickly to go over some of the points that were of interest. I regret that the Deputy Attorney General is not here today because I found—

Hon. Mr. McMurtry: He will be here shortly.

Mr. Conway: I'm going to proceed with my remarks at any rate.

I want to concur entirely with what the Attorney General said in the first page of his opening remarks with respect to the deputy. I've had some experience with this gentleman, in his previous incarnation most especially, and I certainly would have no difficulty supporting the very generous views and remarks of the Attorney General with respect to Mr. Dick.

I have always found him to be a public servant of the old school, which quite frankly is my kind of school. I only regret that he seems to be part of a passing phase here—a diminishing minority. We seem to be getting very much into an American style, very political, new kind of

deputy minister. I'm not particularly enamoured of that trend and I note with some genuine approval the kind of public service we've had from Mr. Rendall Dick.

I was also struck by the references in the Attorney General's opening statement to the constitutional debate. I had hoped to bring my copy of Sheppard and Valpy on the national deal to share with some of the members some of the observations that flow from that. One gets the impression that our illustrious Attorney General was a very vigilant and sometimes more than active member of the kitchen cabinet. These stories about Tom Wells being bruised from head to toe when the cameras rolled in are, I suppose, going to be addressed by other historians.

I started to read that book, and I find the Attorney General has only touched upon the surface of his involvement in that respect. I would highly recommend it to others who might have an interest.

I wanted to note, because we have had some involvement with the Attorney General's department, the whole question of French-language services. I think it goes without saying that the Attorney General has to receive, and he deserves, a great deal of credit, together with the government House leader and the Minister of Intergovernmental Affairs (Mr. Wells), for continuing to hold the progressive element of the government of Ontario rather high in that respect.

I have been monitoring with much interest the speeches he has been making, for example to the Franco-Ontarian law society in Ottawa a few weeks ago. I listened with as much interest to Mr. Wells in the House a day or two later when he talked, I thought with some courage, about his views on the subject.

I think it is appropriate for the Attorney General to talk about the importance of improving French language services in Ontario, as he has done in his opening remarks. I think what he has done in our courts administration has been commendable. I want to reiterate my support for that and to tell him that I very much applaud the guts he has shown in that connection.

It is not easy. We have had debates not far from my riding not that many days ago, involving some people who do not, I sense, share the same degree of enthusiastic support. I know only too well of the divisions this issue tends to raise in old Upper Canada.

I simply want to associate myself with the Attorney General's remarks. I know that he and

others in the kitchen cabinet have just arranged for the appointment of an outstanding Franco-Ontarian to my own county's bench. That is a right and proper course, but it is no longer an Irish bench. That of course concerns some of us, but times do change and the Judicature Act indicates that we are one of the, I think 12, bilingual districts.

The new appointment, sir, has met with a great deal of approval. It again highlights the importance of making French language services available in the courts to the people of my county where there is a substantial French-speaking population.

Both the remarks in the opening statement as they related to French language services and pages 14 to 16 on racism and race relations really have the tone of uplift. I really want to be fair and balanced in this; the quality of the Attorney General's words were of a soaring nature. I see that Dave Allen has not lost his touch. Undoubtedly he speaks for the Attorney General, who has to take credit for those words. There really is an inspirational quality to what you have said on a number of subjects in this statement.

I cannot imagine that anyone could quarrel with what you have said about the need to improve race relations. The words about legal aid and the place that program plays in our administration of justice are truly eloquent. In fact, if I might be quite honest, I was not even here when you delivered that statement but I took the introductory speech home and read it and I actually read some of it a second time.

There was an eloquence and, as I say, a quality of uplift about this speech that I don't often find in the House when the Attorney General pronounces on some of these matters. In fact, one gets the feeling that what we see in the House sometimes is what we saw in the Toronto Sun the other day, the stick-swinging, stick-handling Attorney General in pursuit of members of the press gallery on the surface of Maple Leaf Gardens.

I would only encourage the Attorney General to try to take the courses outlined in his opening statement and to show us more of it in the House. It certainly reads as one of the most eloquent and, as I said earlier, one of the more moving and progressive statements I have heard from any minister around here in some time. I think that ought to be said.

There is one subject of a particular interest about which I would like to speak to the Attorney General. In his response to the open-

ing statements by the opposition critics, I was here to hear the Attorney General speak with considerable pride and commitment to the quality of the officers in the administration of justice who have, in the minister's words—and I am paraphrasing—discharged an important responsibility well and have commanded a wide range and a high degree of public respect.

10:30 a.m.

By and large that is certainly my point of view. I could not take issue with him in that respect, with the one exception that I do want to talk about briefly. The Attorney General might anticipate to what matter I shall now turn my attention.

Hon. Mr. McMurtry: Yes.

Mr. Conway: We have had some discussion of the appointment of Morley Rosenberg, QC, to the Ontario—

Interjections.

Mr. Brandt: That item was a complete mystery until you mentioned the name.

Mr. Conway: The Attorney General and I have had some discussion about the appointment of Mr. Morley Rosenberg, QC, to the Ontario Municipal Board.

Interjection: And you wished you hadn't.

Interjections.

Mr. Conway: I want to, directly and not at great length, review some of my concerns about this particular situation.

I read in Hansard some of the exchanges in the recent weeks, particularly that of October 25, where you indicated that you "would be happy to pursue that dialogue in the estimates debate." I would like to reiterate some of my views on this subject.

First of all, I have had some opportunity in an earlier incarnation to watch the honourable gentleman to whom I have directed your attention in his capacity as a municipal politician in Kitchener-Waterloo. I have to say that I have had for some time more than a little bit of regard for the capacities of Morley Rosenberg.

I think Morley has served his community, as the member for Sarnia (Mr. Brandt) could attest from even longer experience, I suppose, for a long time and with some distinction. About his previous provincial and federal political affiliation there is no secret.

I don't raise the Rosenberg issue simply as a way of striking out—

Mr. Renwick: What was it, 19 votes or 29 votes? It was 51 votes.

Interjections.

Mr. Mitchell: What was his political association?

Mr. Conway: My friend the member for Brantford (Mr. Gillies) is not here. If he were I am sure he would be already striking out at the opposition for wanting to talk about the issue of political patronage.

That is not my concern in this respect. I have understood the role that one's political affiliation plays in the unfolding of the universe. Pray tell, the shock of my life was to find out that even in the administration of justice politics is not an outside consideration. I have no quarrel with that. I think we live in the real world. I grew up in a pretty political environment and I certainly understand how these things work.

What I am concerned about is the impact of the issue we now have on the public record upon the administration of justice. It is certainly my view that what the Attorney General said, and I referred to it moments ago, about the importance of having quality people in the administration of justice, people who are seen to be discharging that responsibility in an honourable way, is and has to be the centrepiece of a viable system of justice.

Hon. Mr. McMurtry: I assume you will be very interested to know that I intend to respond at length about the care we do take with respect to the appointments I recommend to cabinet, namely, our provincial court judges. I would think you would be very interested to know that partisan politics really has no role to play.

Mr. Conway: It is only because I have had some experience with you in this connection, because I know of your past record, that I was doubly shocked to see the situation of Mr. Rosenberg's appointment develop as it did.

I want to reiterate that I have had some personal experience with you in that connection. My own feeling about that was positive in the extreme. That background contrasted very sharply with this situation. It leads me to the sorry conclusion that you were overridden in this respect, or that you were very much under instructions from what you call higher authorities or other authorities.

Let me simply say that the letter which appeared over the name of Mr. Morley Rosenberg, QC—

Hon. Mr. McMurtry: I want to make something clear at this stage, and this statement is not intended to reflect on Mr. Rosenberg one way

or the other. Just for the record, I think it should be pointed out that the Ministry of the Attorney General does not make recommendations to cabinet with respect to appointments to the Ontario Municipal Board as we do in relation to provincial court judges. I do not wish this to reflect on anyone, but I think it is important at this stage to make clear that relatively interesting distinction.

Mr. Conway: I accept that. I simply want to indicate though that you, as the chief law officer for the crown in Ontario, have a responsibility, because you are seen to be the man in charge of this system, and the Ontario Municipal Board, as a very significant quasi-judicial panel discharging justice, and very important justice, in the province falls under your ambit. While you may not make the appointments, I do not think it is a wrong conclusion to draw that you have some responsibility overall in terms of how the OMB fits into the system at large.

As I have said and want to quickly reiterate, I have personally known something about Mr. Rosenberg's background and his experience. I know him to be a man of considerable capacity. Those reports back in 1977 that he was seriously considering letting his name stand for the leadership of the Ontario New Democratic Party didn't strike me as at all peculiar because I thought he would be a very likely candidate, by dint of his past experience, of which my colleague from Kitchener city has a far greater knowledge than I.

It is because of his background, his 18 or 20 years in public life, that I find his letter of June 18, 1982, so reprehensible. We are not dealing with a neophyte; we are not dealing with an innocent. We are dealing with a man who has, for much of his adult life, dealt in the world of politics. He is a member of the Law Society of Upper Canada, a Queen's counsel and all of that. So we have to understand that we are dealing with a seasoned practitioner of the world of politics and public life.

Therefore, for someone of that background to write a letter that says, in part: "As you will recall, Mr. Premier, I was encouraged in the fall of 1980 to join the Conservative Party and to be the Conservative candidate in the March 1981 election.

"I did so on the basis that if I lost the election that I would be assured of a provincial judgeship, reasonably after the election and certainly before the end of my term as mayor.

"This assurance was given to me by the local Conservative office, in particular Mr. Hoskinson,

and later confirmed at a dinner meeting in Toronto with Mr. Eddie Goodman. It was further confirmed, Mr. Premier, at the dinner meeting you had when you visited Kitchener.

"I have served the public office for the last 15 years in Kitchener. Nine years as an alderman and the last six years as the mayor. I do not wish to run again for re-election and as you are well aware, the election is in November of this year, and it does appear that I will be contested.

"I would like to fill a position as a provincial court judge and serve the province and the people in that capacity.

"Sir, the slogan the provincial campaign promoted during the 1981 election was 'Keep the promise.' I am appealing to you, Mr. Premier, to 'keep the promise,' with regard to my appointment to the bench.

"My very best personal regards, and keep up the good work in Toronto.

"Sincerely yours, Morley A. Rosenberg."

10:40 a.m.

For anybody who is a member of the bar and a Queen's counsel to write such a letter is to seriously undermine the administration of justice. It leaves the clear impression with the good, innocent people of Renfrew county and elsewhere in the province that there was a deal here, that there is a prima facie case for trading in public offices. I know from your past practice and from your stated intent, as outlined in your opening remarks, that is not what you want to see or to appear to be happening in Ontario.

Bad enough as that is, it gets even worse when a week or so later the honourable gentleman, Mr. Rosenberg, speaks at a press conference in Kitchener. In a four-page statement which he read at the press conference, Rosenberg said—I quote from the Kitchener-Waterloo Record of September 24, 1982—"Unequivocally and without question I want to state that there was never any commitment made to me or any inducement held out to me by any of the individuals referred to in my letter of June 18, 1982, nor by anyone at any time connected with the government of the province of Ontario or the Progressive Conservative Party."

Here is a man, who I know to be from past experience reasonable and bright and capable, publicly admitting that he fabricated serious charges which impugned the integrity of the Premier (Mr. Davis) and the Attorney General. We have had a debate in another committee about which of the versions is accurate. I am not going to get into that for this day's hearings. Clearly, it is a case where one, but not both, can

be true. We are left with the sorry spectacle of a man who is about to ascend the quasi-judicial Ontario Municipal Board having, as he says himself, in a fit of confusion and frustration dissembled about a very important matter.

Whatever arrangements were entered into between Mr. Rosenberg and the Conservative organization in Kitchener-Waterloo is of no real interest to me at this particular time. I am most concerned that in two or three weeks' time he is going to become a member of the Ontario Municipal Board.

I have to say to you, Mr. Attorney General, by looking at his public performance in these past two months, one can objectively conclude that however well he has served the people of Kitchener and the province in other capacities and however able and capable he might be to continue his public service, this man, having done what he has done in his letter and in his subsequent press conference, cannot be allowed to sit in judgement on other people. He has indicated at an important point in his life that he does not have some of the essential qualities which I think we all want in people who are going to be dispensing justice from any bench.

I would very much like to hear your response in this respect. I do not want to prolong this. I simply want to register my strong objection, not on political grounds, though there are many who, I am sure, will see it as that, but simply—

Hon. Mr. McMurtry: You are never political, Mr. Conway.

Mr. Conway: I like to see myself as reasonable. I think the government publication that brought Morley's appointment to me was also one that indicated the former member for Carleton-Grenville, Mr. Donald Irvine, had just been appointed to the St. Lawrence Parks Commission. It was an excellent appointment with which I have absolutely no quarrel. That he was a member of the Conservative Party and a member of the cabinet of William Davis is of no real concern to me. I think as a distinguished citizen of Prescott, he is very able and well-suited to that responsibility.

But when we receive this kind of letter and then this kind of muddled retraction, what is the public to think? What is anyone out there to think after reading Mr. Rosenberg's letter? I believe they are going to think the worst of the political system and I do not think they are going to be very enamoured of the administration of justice. It brings a blemish that we can well do without.

I have no quarrel, if there was some arrange-

ment struck, to let the government discharge it in some nonjudicial way, with some nonjudicial appointment to Mr. Rosenberg. But having done what he has done, I think he has unfortunately, but none the less, disqualified himself. I would hope, Mr. Attorney General, in light of what you have said earlier in these estimates, that you would reconsider the position of the government and not proceed with his appointment on January 3. It is an appointment which is going to take effect without the honourable gentleman ever needing to explain himself on these matters.

I think, quite frankly, it ought to be a matter of personal honour. I think anybody who would write a letter like the one he has written here—God, knowing Morley, I can imagine what we have not seen, but that is the inside story that only the Attorney General and others know. I can just imagine. I bet that phone never stopped ringing from about March 20 on.

At any rate, I do not know what the mail brought. But to have written a letter like that and then to have turned around and to have publicly denied it and to have said "I will not answer any questions" on something as important and as basic as that brings the whole system under a cloud that we can well do without. I would just invite the Attorney General to share with us his more general observations and specific attitudes on this matter.

Hon. Mr. McMurtry: Since Mr. Conway has made some rather general observations about the administration of justice, I think it might be of interest to the members if I were to outline briefly the process that is followed in relation to judicial appointments. The interest of Mr. Rosenberg, according to this letter and other correspondence, was with respect to an appointment as a provincial court judge.

Usually, individuals directly indicate their interest in an appointment to the provincial court bench. Sometimes we hear indirectly or we approach people, but more often it is because the individuals themselves have expressed some interest to us or, if it was a federal appointment, to our federal colleagues.

10:50 a.m.

The procedure that is invariably followed if there is an opening—to the best of my knowledge in the more than seven years that I have discharged these responsibilities—is to arrange for the chief judge of that court to have a preliminary interview with the individual candidate. The chief judge makes a number of

inquiries as well as conducting the personal interview, and if he is satisfied that this person is a good candidate, I will submit that person's name to the provincial judicial council, presided over by the Chief Justice of Ontario. It includes the Chief Justice of the High Court, the chief judges of the provincial courts, the treasurer of the Law Society of Upper Canada and two lay parties.

If there is an opening to be filled, and we are seriously interested in the candidate going forward, the name and background material is submitted to this judicial council. The individual members make their own personal inquiries and they also have the candidate appear before them. Then, in due course, I hear from the judicial council, which either does or does not recommend the appointment.

I think it is important, not only for the committee, but also for the public to know the extent to which this process is detached from the partisan politics of the day. Any one who is appointed as a provincial court judge, in effect, is recommended to the Attorney General by a very prestigious body which is completely independent of partisan politics. It is only at that stage that I bring the name forward to cabinet.

I do not recall that Mr. Rosenberg's name ever went forward to the chief judge simply because there was no opening in that area. We never proceeded, and I gather this provoked a little bit of frustration, judging by the very unwise letter that was written.

As another illustration of the lack of partisan politics in the discharge of our responsibilities, I am mindful of the fact that, in referring on a number of occasions to Mr. Rosenberg as Mr. Rosenberg QC, I can recall the gentleman who strongly recommended to me that Mr. Rosenberg be appointed was somebody who shared respect for his past public service, and that—

Mr. Conway: What else did Michael Cassidy tell you?

Hon. Mr. McMurtry: —was the former leader of the New Democratic Party, Michael Cassidy. He normally does not demonstrate much interest in these appointments, but in Mr. Rosenberg's case, he felt that because of his very dedicated public service to the community he was worthy of serious consideration. It was because of Mr. Cassidy's recommendation that I recommended his appointment to cabinet.

Mr. Conway: God, there is a first time for everything.

Hon. Mr. McMurtry: I think it is important to reflect on this fact because you and Mr. Cassidy, although members of different political parties, have both expressed, as you have today, respect for Mr. Rosenberg's contributions in public life. You said you have been impressed with his capacity and contribution and you have used, I think, relatively positive, if not flattering adjectives, like able, reasonable, bright and capable in describing Mr. Rosenberg in respect to his—I think you said—almost 20 years in public life.

Having said the number of positive things you have about Mr. Rosenberg, it rather saddens me that you, whom I generally regard as a very fair-minded individual, would decide that a very foolish, if not a very stupid, letter that was written should, notwithstanding this 20 years of community service, automatically disqualify him for any consideration in serving on a board, such as a municipal board, which, as you quite correctly point out, is a quasi-judicial body.

The letter is a very unfortunate mistake on the part of Mr. Rosenberg. I do not want to speculate as to what the result would have been if the Premier or his cabinet colleagues had been aware of the letter when his name came forward. To my knowledge, nobody was aware of the letter.

Obviously, that would not have enhanced the chances of his appointment. Be that as it may, Mr. Rosenberg would be the first one to admit, as I think he has, and I have only followed this through the press, that it was a very serious mistake writing a letter that did contain, at the very least, some significant exaggerations and, as he later admitted, misunderstanding as to what, if any, commitment had been made. It's true, and again I only know what I've read in the press, Mr. Rosenberg has stated that no such commitment was made to him.

You quite properly point out that he should not have written such a letter and that such a letter did represent a very serious error in judgment, about which no one else would disagree, including, I'm sure, Mr. Rosenberg. Notwithstanding this serious error in judgment, in the context of his almost 20 years of effective public service, it saddens me that you would take the position that he could not make a contribution to the Ontario Municipal Board, for which, I think you would agree, if it had not been for the letter he would be otherwise eminently qualified.

I really don't think, Sean, in your heart of hearts you really subscribe to that view, that a

person who makes an error of judgement of that nature should automatically be disqualified from this type of service. I don't think you really believe that if you examine your own conscience.

Mr. Conway: If I might just intervene there, Mr. Chairman, it may sadden you, but that is my view and it is without malice or without prejudice. It's simply because what is at issue here is something fundamental to the system and to the administration of justice. You say an error in judgement, and that is true. I think it was a critical error in judgement at a critical time.

I use those adjectives because I think I have to be reasonable and fair. I use those also because I want to convey a sense of whom we are dealing with here. We're not dealing with somebody who is, as I said earlier, inexperienced or a neophyte. Of course, that makes this letter and the subsequent denial of the letter, in my view, all that much more serious. It is a matter, as you say, of judgement. It was a critical error in judgement by a gentleman whom we are now going to send off and pay to sit in judgement on the community at large on critical issues of development and such like.

It is unfortunate and in some ways tragic for someone who has had the public career of Mr. Rosenberg to have that happen. I regret it did happen, but it is now a matter of the public record. The issue is judgement. The issue, in addition to judgement, is the signal we want to send to the community at large, the signal you eloquently spoke of in your opening remarks.

I'll tell you, this kind of an appointment sends wrong signals, signals that contradict the kind of system I believe you want to build. I just don't believe, personally, that justice will be served or will be seen to be served by the allowing of this gentleman with this record now to carry forward into the public domain. I don't want you to be under any wrong impression about that.

11 a.m.

Having said what I said about Mr. Rosenberg's past, we have to look at this particular chapter which is critical, in my view, in terms of the outrageously bad judgement he demonstrated. I'm talking not only about the letter, but about the immediate denial of his own words and the admission that he is given to fits of confusion and frustration.

If you had done that, notwithstanding a very outstanding career at the bar, I would be sitting here saying, "Mr. Premier, we've got to get another Attorney General," because that's too

important and too sensitive a role to be played by someone who admits publicly to fits of confusion and frustration that lead him to dissemble and, at the very least, misrepresent. I don't think that is too harsh a judgement for the protectors of the public interest to take, notwithstanding all the good works Mr. Rosenberg might have performed in an earlier incarnation and setting aside completely the political considerations which may or may not be part of all of this, which Mr. Rosenberg himself directs our attention to.

The issue surely is judgement and the capacity of this individual to sit in judgement on other people. I have to think that reasonable people everywhere, inspired by no malice and by no prejudice, would unavoidably conclude that, sad as it is, Morley Rosenberg, by virtue of this performance has disqualified himself from sitting in judgement on any of the rest of us. His talents, such as they are, might have to be taken advantage of in some other capacity.

Surely we come back to the old adage that not only is it important that justice be done, but that it be seen to be done. The perception of this by the community at large is not very positive. There is a kind of collective giggle, "Well, you know, read the letter and it confirms," and, regrettably, a very negative impression is left in the minds of a lot of people about the world of which we are a part.

I subscribe to the eloquence of your statement at the beginning of these estimates about the first order of importance of having quality people sitting in these high chairs of judgement. Having said what I said about Mr. Rosenberg's previous roles and responsibilities, I don't take back any of that. I have had some opportunity to watch him in that respect. But if I had written that letter and then followed it up with that press conference, it would be for me a matter of honour to resign immediately. I just don't think you can leave this unanswered and unredressed at the public forum. It significantly undermines the very good things you are trying to do, as outlined in your earlier remarks.

Hon. Mr. McMurtry: I don't really have anything to add to what I said a few moments ago, other than to say that obviously we agree that it was a serious error in judgement on Mr. Rosenberg's part, but in my view, not such as to automatically disqualify him from making a contribution on the Ontario Municipal Board. Only time will tell in this respect, but I really don't think I have anything further to add.

Mr. Conway: Just to pursue it one step further, are you happy to leave it that no opportunity would be afforded to anyone, either in the political community or in the press, to have at this man for a better accounting than he has already afforded?

Hon. Mr. McMurtry: I would say that you and others have had at him to a very considerable extent. I just can't feel very happy personally about supporting this ongoing public pilloring. Despite his serious error in judgement in writing that letter, I don't think that this ongoing public pilloring is warranted, let alone fair.

Mr. Conway: Are you then satisfied that six months have had at him to a very considerable extent, as he may for some time to come, making a judgement on some local development question that he won't succumb to another fit of confusion and frustration and render some perfectly outrageous judgement that you or someone else is going to have to overturn? What guarantee have we got that poor Morley is not going to have a relapse?

Hon. Mr. McMurtry: Mr. Conway, you are a relatively young man and you may go through your whole life without succumbing to a momentary fit of frustration. If you do, all I can say is that you are a very unusual human being.

Mr. Mitchell: He is that now.

Mr. Conway: I suppose that is the Attorney General's point of view. I would conclude by saying that I think it is a very sad chapter in terms of the administration of justice, and sad for Morley. Let me make it very clear. To leave that legacy and then to imagine that you are going to dispense justice to people who have every opportunity to acquaint themselves with that, I really think is an unfortunate comment. I think it brings the system down a full step or two. This was a case where, whatever commitments may have been entered into, and if one can be political for a moment—

Hon. Mr. McMurtry: To the best of my knowledge, as Mr. Morley Rosenberg has conceded, there was absolutely no commitment ever made to him. Certainly in any communication I had with him, it was not even hinted at that any commitment had been made.

Mr. Conway: As one gentleman to another, I obviously have to take that as your statement on the matter. I have to share with you a sense of incredulity, which must also be shared by the member for Kitchener (Mr. Breithaupt), to think that here is a man who spent almost all of

his adult life in a very active capacity as a New Democrat.

Prior to the 1981 election, the last I heard about Morley was that he and the former member for Brantford, Mr. Makarchuk, were up fighting a great socialist battle at the Elora gorge. Then we hear that all of a sudden he had forsaken all his entire adult life involvement with the New Democratic Party to run for the Conservatives. I have to tell you, and you may not know the situation as well as some of us do, we have never had the sense of self-righteous virtue that the socialists have long held. Certainly one would have expected that to have brought about that kind of conversion, some indulgence must have been—

Hon. Mr. McMurtry: I have to concede, had he chosen to join the ranks of the Liberal Party, then it would be incredulous to imagine that could happen short of some extraordinary negotiation.

Mr. Renwick: He might have been a county court judge by now.

Mr. Conway: If it is good enough for John Gilbert, I guess it is good enough for the rest of us. Seriously, I have to say there was, on the face of it, a case of trading in offices and that this conversion was bought, but that is a political issue and I am not going to belabour it with you.

I just want to conclude by saying I think this incident is a serious and negative one which is going to make your job more difficult. Here was an opportunity for the Attorney General in his capacity as chief law officer of the crown to have moved quickly and to simply have made it clear to whoever was largely responsible for this appointment that it was simply intolerable that this man, having this public record now, be allowed to serve on the OMB. I would have much preferred his reassignment to something outside the system of the administration of justice.

You have obviously indicated your willingness and your acceptance of it. I guess we differ on that and I thank you for your indulgence, Mr. Chairman.

Mr. Chairman: Do any other people wish to speak on vote 1401?

Mr. Renwick: Mr. Chairman, I do not have anything further that I want to say on that vote. I do have two colleagues who did want to speak, but I do not want to delay the proceedings. I believe they will be up shortly and they will just have to fit in. I would like them to have the opportunity to speak on two matters of deep

concern since they are not directly connected with these estimates.

11:10 a.m.

Mr. Chairman: Mr. McClellan has a concern on the Constitution. Perhaps that can be found somewhere else. Mr. Johnston's is on vote 1401 and could fit within item 1 or item 3 and then Mr. Reid's concern is item 3.

Mr. Renwick: I am sure my colleagues would agree to that.

Mr. Breithaupt: We could carry item 1 and then go on to item 2 because I know Mr. Boudria has some comments with regard to French-language services. I am quite content at this point that vote 1401, item 1, carry. I am sure we can fit in our colleagues when it is convenient.

Mr. Elston: I have one concern on the last matter brought up by the Attorney General. He spoke about the cabinet's deliberations when a name is given to it. Had they known about the letter at that time, it would not have enhanced Mr. Rosenberg's chances for appointment. I am stuck at that point to decide what sort of obligation resides with a member of cabinet who receives a letter like this which has been publicly confessed not to have the accuracy that is required.

What sort of information do you require from your cabinet colleagues? If you are discussing an appointment and get a letter that is full of inaccuracies from a person demanding fulfilment of promises, do you then sit around and say, "Well, I got this letter, and in discussing this appointment, we should take this into consideration"? If you require that of your cabinet colleagues, why wasn't something brought to your attention by the Premier, for instance? He had this and he knew when he got it that it was not—

Hon. Mr. McMurtry: I do not think the Premier was aware of the letter; that is my information.

Mr. Elston: Even though it was addressed to him and marked personal and confidential, it was never shown to him?

Hon. Mr. McMurtry: Not in advance of the event; that is my information.

Mr. Elston: So your decision on the appointment was made on what date?

Hon. Mr. McMurtry: I cannot tell you now.

Mr. Elston: Could you provide us with that information? It is dated June 18, and he did not know about it.

Hon. Mr. McMurtry: I think the letter did arrive somewhere in the Premier's offices prior to the appointment. I do not think anybody is quarrelling with that.

Mr. Elston: It seems to me that somebody in the Premier's office must know about the agenda and the considerations which are being made in cabinet. If a letter of this sort of magnitude came to your desk from a person who was seeking some kind of an appointment, it would be rather difficult to understand if it was kept in a drawer some place for a number of days until after a decision was made.

There must be some degree of responsibility placed on people in the Premier's office to bring this sort of information to his attention so it can be looked into by the Attorney General, especially when the suggestions bring to us such serious thoughts about the administration of justice.

I did not really expect you to have the answers for it, but it leaves me with a sense of not knowing the full procedure by which you develop your decisions for these appointments and the degree of responsibility you place on the cabinet people who must aid you in coming to that final determination.

Hon. Mr. McMurtry: Appointments to the Ontario Municipal Board are made on the recommendation of the Premier. I am sure that people in his office do their best to bring all relevant information to his attention. This would appear not to have happened in this particular case. In any event, I think you have to bear in mind that in dealing with an individual who is well known to many people, and again to quote Mr. Conway, was generally known, prior to the unhappy letter episode, as being a capable, bright, reasonable, able individual—

Mr. Elston: And also a letter writer now, as we know. That reflection is the thing that keeps coming back to us. I do not expect you to tell me all that goes on in the Premier's office or the procedures there, but it does leave a sense of emptiness with respect to the requirements and degree of accountability of each cabinet person and of the Premier. As you say, he makes recommendations for appointments to the board.

Hon. Mr. McMurtry: One of the letters I received as personal and confidential strongly supported—I am not going to reveal the name of the writer, a lawyer from Kitchener, a very strong supporter of Mr. Breithaupt, very prominent in local legal circles—and extolled Mr.

Rosenberg's virtues. I just want to put all of this in perspective.

Mr. Conway: Let me see if I can help you with that. I do not know whether I put it in writing, but I communicated to you that I had no difficulty at all in aggressively supporting the candidacy for provincial court judge of someone who happened to have been not only a distant cousin, but president of the North Renfrew Progressive Conservative Association. By dint of his exceptional capacities, he won the day and is now a provincial court judge. I had not the slightest difficulty in doing that because, quite frankly, notwithstanding his contrary political orientation, there was absolutely no question that he was an outstanding candidate for the position.

I just want to reiterate to you the very serious difference created by the performance of an individual. If my candidate in that situation had, after my recommendation, performed as Mr. Rosenberg has performed in the period, particularly of September and October 1982, I would be the first one on your doorstep to say, "Notwithstanding all his other good works, we cannot appoint people like that to these positions because it is simply wrong, if not immoral, to set that kind of a bad tone to the administration of justice, people whom we want to sit in judgement on the rest of us."

Part of what you are saying in response to some of my questions about some of the qualities of Mr. Rosenberg almost reminds me of too strong an analogy. For much of middle America, Richard Nixon was a marvellously, wonderfully, honourable man, but when the tapes were revealed we saw another side of the man that began to disqualify him from the high office he held.

I just do not want to leave any wrong impression with you of the seriousness with which I view that public performance by this particular gentleman as it related to his letter and his subsequent press conference. That is a very serious matter that has to be seen to be that and responded to in that way.

Mr. Boudria: I would like some clarification. I wonder at what point we should discuss some of the constitutional issues referred to in the opening remarks of the minister. Would that be on this vote or would it be further?

Mr. Chairman: It was intended to be on this item. Mr. McClellan also wished to speak to constitutional matters on item 1.

Mr. Mitchell: As does Mr. Watson.

Mr. Chairman: Do you have some comments on the Constitution you wish to pursue at this point?

Mr. Boudria: They are very brief but if we are going to address them some place else, I—

Mr. Chairman: If we have to, we will fit them in later if we must, but now is the appropriate time.

Mr. Boudria: I have just one or two questions. In your opening remarks, you talk about the second stage of reform of our Constitution, principally the reform of the Senate and other matters. I just wanted to know if there has been any kind of consultation between the federal government and the provinces as to when we are going to start some of the deliberations and, hopefully, some of the debate we may have in the Legislature regarding more changes to the Constitution.

11:20 a.m.

Perhaps while you're telling us about what is going to happen there, we could go a little bit deeper into an issue I raised a number of weeks ago with the Minister of Intergovernmental Affairs (Mr. Wells) at his estimates. It was with regard to the entrenching of the procedures, some of which you're doing already, in the next round of constitutional amendments, principally as it relates to French language services.

I know French language services will be addressed in the second vote, as opposed to this one, but I feel that aspect of it should be discussed now. I recognize there is some difficulty in that. It is apparent to all of us, or at least it seems apparent to all of us, that cabinet is not even unanimous on the issue of entrenching the things you are already doing. That is somewhat confusing because if you're already doing them, it wouldn't seem like such a big step to make them official. Nevertheless, we are experiencing that situation.

If you would like to comment on both of those things, I would appreciate it.

Hon. Mr. McMurtry: As far as the first ministers are concerned, the next round of constitutional discussions will probably take place during the second week in March.

Mr. Boudria: Yes, I recognize that.

Hon. Mr. McMurtry: That will concentrate on issues related to our native peoples, although there will be a day set aside for discussion of other matters. At this point, we don't know the extent to which Quebec is going to participate in these constitutional discussions. I would expect

there would be at least one meeting of the ministers who have served on the continuing committee of ministers on the Constitution—the so-called CCMC group—prior to that meeting.

At this stage, I don't know what discussions there will be in relation to constitutional reform outside of the many issues related to our native people. Quebec's participation or nonparticipation is a very important ingredient in the process.

With respect to French language rights in Ontario, it is my view that the rights have been extended with respect to the administration of justice. I would hope it would be regarded as something that has already been placed on a firm, permanent, lasting foundation. I think entrenchment in the Constitution is a logical step so far as these rights are concerned because we strongly believe they are going to be a permanent part of our system.

As part of this whole issue of entrenchment, one has to be satisfied that we have reached the stage where we do have a system that is functioning properly and that we have the resources to continue to guarantee these services. Frankly, because of my own personal commitment and those of my colleagues in the ministry to the extension of French language services within the administration of justice, we are prepared to take a few modest risks, but we do have inadequate resources.

There are times when people might have even suggested that we were flying a little bit by the seat of our pants in order to continue to demonstrate progress in this area. That was because there is a very real shortage of French language resources in our province, particularly in relation to people who are trained in the law directly or who are able to perform allied services. I hope that situation will continue to improve.

It seems to me that we have to be well satisfied that our resources are functioning effectively and adequately before we seriously discuss entrenchment. Speaking personally, and at this stage I can only speak personally, this would be a logical step, once one has the resources.

I think it is very important with respect to entrenchment of any rights in the Constitution or in any legislation for one to be well satisfied that one can provide the service. I know our colleagues in New Brunswick have worked very hard in this area, and if memory serves me correctly, there was a very lengthy delay between the enactment of the French language services legislation in New Brunswick and the proclama-

tion of that legislation. There was almost a 10-year hiatus because, notwithstanding the sizeable French-speaking population in relation to the overall population, close to 40 per cent, the legislature passed the legislation and then reality dawned that they had a lot of work to do to make sure these resources were in place.

Despite the fact that we all admit there is some value in the grand gesture, symbolism and what not, and I'm not underestimating the value of that, I think the initial enthusiasm that can be produced by this type of symbolism, the grand gesture, can quickly turn to cynicism if the resources are not available to provide the services that are guaranteed in legislation, let alone in the Constitution.

We wouldn't pass legislation or wouldn't continue to issue orders in council pursuant to that legislation unless we were satisfied that we could provide the services adequately. There will be some delays, obviously, with respect to some trials as a result of this, particularly if it is a trial that involves a criminal case in one part of the province that has to be tried by a jury in an area where there is a reasonable number of prospective jurors who are bilingual.

Again, I reiterate that given the importance of these rights, entrenchment in the Constitution, in my personal view, would be a logical step.

Mr. Boudria: I recognize what you're saying is that you see the entrenchment as a future logical step, and from what I can gather you see the things you are establishing as being irreversible.

Hon. Mr. McMurtry: I would hope so.

Mr. Boudria: That is obviously what I hope and, I'm sure, is what the francophone population hopes as well. I don't think that most of us are concerned about a reversal of this trend so long as you are the minister.

It is quite well known in the francophone community, and I say this in all sincerity, that you seem to have a very dedicated commitment towards providing those services. I'm sure that if the francophone population were to analyse each member of cabinet and rate them in so far as how favourable they are perceived to be towards providing francophone services, you and the Minister of Intergovernmental Affairs (Mr. Wells) obviously would rank right at the top of that category.

I would like to congratulate you for being that way. Of course, unfortunately, there will come a

day when you, sir, or myself or all of us will no longer be here.

11:30 a.m.

Hon. Mr. McMurtry: There's no doubt about that.

Mr. Boudria: It is to be hoped that will be in the more distant future, as opposed to the immediate one. Nevertheless, those are the reasons why certain services should be entrenched, in my view. I do agree with you that whatever is done should only be done when you can provide the service.

Perhaps I can take just a moment to describe the situation we have right here in the Legislature where I am afforded, for instance, the opportunity to speak in either language. I can speak in either language, but I can only be heard in one.

If you think about that for a minute, if I had been elected on March 19, 1981, as a unilingual francophone, between the time of my election and the first day of my sitting, I don't know how that would have been dealt with.

Would there have been translation services provided in the Legislature within four or five weeks? Would there have been this mad scramble to install all kinds of gizmos and to hire translating personnel? Or would they have said, "Don Boudria, you are going to take a six-week immersion course and learn how to speak to us in English"? Or, "You can speak in French, but we will hear you in English because we can't listen to you." Or, "We can listen to you, but we won't hear you."

That just serves to illustrate the inadequacy of providing something on paper, but then not having the equipment, the technical knowledge and the resources to make it work. That is obviously what goes on, I feel, in the Legislature here right now. I wouldn't encourage you, as the Attorney General, to do the same thing in the courts. There you would have the symbolism and nothing else. That would be even more inadequate than the reverse, because obviously what we must not do is mislead the people into believing they have something they really don't.

For all that, I can appreciate your position. What you are telling me you want, or what you see as being a logical step, is to entrench the services in the Constitution and you see them as being irreversible.

In looking at what is going on now, I am of the view that we are awfully close to that point where everything you provide already could be easily entrenched, almost tomorrow, without

your having much of a difficulty in ensuring the continuity of those services afterwards. This is opposed to, for instance, what we have here in the Legislature. It may be in the standing orders that we can do something, but technically we can't.

Hon. Mr. McMurtry: I hope we are not too far away from that point. There are some areas where we're going to have to have a little more experience, particularly in the area of jury trials, criminal and, maybe even more so, civil jury trials, exchange of pleadings and what not. Criminal jury trials are a less complicated problem perhaps, notwithstanding the fact you may have to move the venue, the place of the trial, elsewhere.

I have a French language advisory committee, as I think you know, with respect to these services. They have identified a number of problems that still have to be worked out, particularly in relation to the exchange of pleadings. I think you would be the first one to agree that, as we continue to extend, it is important to do it properly and not create the wrong impression, quite apart from the wrong reality, with respect to the cost of litigation, particularly in dealing with perhaps a French-speaking litigant on one side and an English-speaking litigant on the other side. Some of these technical details still have to be ironed out.

I agree with you. My own personal preference, obviously, would be to see it done while I am still around; I would feel much more comfortable if this were possible. But there are still some technical and practical problems that have to be ironed out, although I think we are making pretty good progress.

Mr. Boudria: In conclusion, very briefly, I would like to reiterate my congratulations to you for the improvements you are providing in that area. Personally I am very pleased, and all honourable members will recognize that I am the first to express my displeasure when services for francophones are not provided in a way that I feel is adequate, or when they are not improved in a way I feel is significant. Consequently, I feel its only incumbent on me at this time to tell you that, certainly within your ministry, the improvements are worthy of mention.

I would only hope it would be the same in the other ministry very close to yours, that of the Solicitor General. I am not nearly as pleased about the improvements there, for obvious reasons, especially the Ontario Provincial Police services, which I feel are grossly inadequate in

so far as providing services for francophones are concerned. You are no longer responsible for that area, however, so I suppose it is not appropriate to discuss that at this time.

I am very pleased with what you are doing. I recognize that when you are doing this, it is as a member of cabinet, and again I can appreciate that there is not unanimity on providing or improving francophone services.

If I can make only one negative remark, I do feel it is not in very good taste for cabinet ministers to introduce legislation improving French-language services without any kind of ministerial announcement prior to question period or anything like that. For instance, I remember that on certain days the Minister of Consumer and Commercial Relations did that, and, I believe, on another day I saw you, sir, doing it.

I remember one day when the Minister of Consumer and Commercial Relations announced two bills, one related to used cars and one related to francophone services. He tabled those two bills after question period, but prior to question period he read a lengthy announcement on the used car bill, which seemed like a really trivial matter. On the other one, on what at least to me was so important—and I am sure it was to the half million Franco-Ontarians—he did not choose to make any kind of oral presentation. It was just introduced very briefly after question period and, being the second of the two, it ensured that the galleries were empty by the time the legislation was introduced.

I feel it is unfortunate when I see that going on. It is certainly very sad to see, and I do hope that if it is intentional, perhaps it could be done otherwise next time. If it is not intentional, I draw it to your attention, and it is to be hoped we will not see two bills introduced with a ministerial announcement for one and the obvious omission of it for the other.

Hon. Mr. McMurtry: I should like to address that issue; I know it has been raised before.

First, I should like to thank Mr. Boudria for his support and encouraging remarks.

With respect to our initiatives in the court system, we have certainly always given a ministerial statement at the beginning of question period in the great majority of cases, and I should like to see if we can somehow check on that. The last time we may not have; I can't honestly be sure. If I made a statement on the introduction of the bill, as opposed to a ministerial statement at the beginning of question period, I would certainly have distributed that

statement to the press gallery as soon as it was made.

I do not want to appear overly defensive, but I am aware of the fact that in some of the congratulatory remarks that have been made by individuals in support of what we have been attempting to do in the administration of justice, the comment has been made before that we are trying to sort of keep it quiet.

Mr. Boudria: It is called the backdoor policy.
11:40 a.m.

Hon. Mr. McMurtry: I just want to make the case that, as far as I am concerned, it has certainly not been my intention because we have always distributed press statements widely with respect to these initiatives. I regret very much, however, that perception has been created in some circles and it is one that we are certainly going to try to avoid in the future because it was certainly not intentional.

Mr. Boudria: I am glad to hear that.

The instance I was referring to was so blatantly obvious. It was not one of your bills that day. It was a case where the Minister of Consumer and Commercial Relations introduced two bills, but omitted to comment on one and announced the other. Your bill was not a similar case, but I draw it to your attention in the hope that things will be done in a way which I believe would be keeping in line with everything else you have been doing in improving francophone services. I am glad to hear that it was not intentional and that things will continue to progress, and I thank you.

Mr. Breithaupt: Following along on that particular point with respect to French language services, I am wondering if the Attorney General can report to us with respect to the continuing statute translation process. Last year you favoured me with a list of statutes that had been translated. There has certainly been substantial work done. I am wondering what you can report on the ongoing situation with respect to further statutes. I think that would fit into the comments of my colleague Mr. Boudria, as we discuss the use of the French language and the availability of a variety of services in the French language to the people of Ontario.

Hon. Mr. McMurtry: I shall try to get you an up-to-date list. It would appear that the list I have would be a little out of date. It is from earlier in the year.

Mr. Renwick: Perhaps that might be more appropriate under the legislative counsel vote when we get to that.

Hon. Mr. McMurtry: Yes. As of February 1982, there were about 70 statutes that had been translated.

Mr. Renwick: Mr. Chairman, I am prepared to pass vote 1401, and we could move on to vote 1402.

Mr. Breithaupt: I am content to do that. There was just one other question I wanted to raise with the Attorney General.

Mr. Chairman: I think Mr. Watson is next on the list. I will put you down after that.

Mr. Watson: On the matter of the Constitution, which I understand we are now discussing, there has been considerable discussion concerning property rights in the Charter of Rights. I know you were involved in these discussions. I appreciate your comments that you are meeting again next March and I would like you to comment, perhaps in general, on whether you anticipate that there are going to be changes and, specifically, what your stand is in terms of including property rights in the charter.

Has it got to do with the fact that we perhaps have a system where we say, "No one really owns any land at all; it all belongs to the crown to begin with," or is it a problem that we have to have so many laws to expropriate, to take property away from people? Why was not the right to own property included in the discussions you had to begin with, and what is the possibility of getting it included in the future?

Hon. Mr. McMurtry: The main reason that property rights were excluded was the opposition of Saskatchewan and Prince Edward Island. I am not sure whether Quebec was part of that. Also, we felt that in Ontario property rights are well entrenched in the law and their exclusion, in our view, was not a matter of major concern at this point. We felt there is such a strong tradition of law in relation to respect for property rights in Ontario that we really did not believe that property rights were particularly vulnerable.

There was, however, a major concern expressed on the part of Saskatchewan in respect to nonresident ownership of farm land. I am told there are large tracts of prime farm land that are being purchased by nonresidents and being taken out of farming. The then Premier of Saskatchewan was very greatly concerned about the right of the province to protect farm land for residents of Saskatchewan.

Similar concerns were expressed by Prince Edward Island. I can very well recall the former Premier, Mr. MacLean, stating, I think quite

eloquently, that the only real resource Prince Edward Island had, other than its people, was the land, particularly the land that was by the seaside, and they wanted to protect that land as much as possible for the residents of the island, the Canadians. They were worried about the whole foreign ownership issue as well as the nonresident issue.

Mr. Watson: How would that conflict with what was proposed?

Hon. Mr. McMurtry: They expressed considerable fear that the property rights would be interpreted as the right of an individual to sell to whomever he or she wished, whether it was a foreign owner or not.

It was their view that entrenching property rights in the original form—I think one of the curious sidelights to this whole drama, and it certainly was a drama, was that the exclusion of property rights was perceived by many people across Canada as being a plot engineered by Mr. Trudeau because he did not believe in property rights.

Like many other issues, it was based entirely on mythology, because the original draft prepared by the federal government did include a draft in relation to property rights. It was only taken out because of the strong objections of one province headed by a Progressive Conservative premier and another province headed by a New Democratic Party premier. I think one or two other provinces also expressed some concern. Nova Scotia did.

The Ontario position is that we are prepared, as we were initially, to support the inclusion of property rights.

Mr. Breithaupt: I presume that a proper comment could be made that no Liberal premiers would have objected to that situation.

Hon. Mr. Murtry: There were not too many around at the time.

Mr. Mitchell: Who were they?

Mr. Watson: In general terms, is the Charter Of Rights or the Constitution likely to be amended? Are we likely to have an amendment every year or every five years? What is your view on how often we are likely to have amendments?

Hon. Mr. McMurtry: That is very difficult to speculate about. This could happen as early as next March. I know British Columbia is pushing it very strongly. I expect it will be considered at the first ministers' meeting in March 1983. Our

position is to support the inclusion of property rights.

Mr. Watson: Okay.

Mr. Breithaupt: I have one other point I will raise on this vote, and of course there are many other things that one could raise.

11:50 a.m.

I was interested in seeing a news clipping with respect to the review Judge Guy Goulard made, involving 200 provincial court judges across the country. He said, "For a very similar situation and similar backgrounds we have an apparently alarming disparity" with respect to the matter of sentencing.

I'm wondering if the Attorney General can comment now as to his views and the procedures which he has to ensure that somewhat less disparity is the order of the day, rather than some of the difficulties which have come to a head over these last few years.

Hon. Mr. McMurtry: Disparity of sentencing is something that has been traditionally subjected to comment from time to time. I haven't seen the Goulard study.

Mr. Renwick: It's not available yet. It was reported in advance. I tried to get a copy of it, but it is not available yet.

Hon. Mr. McMurtry: That's helpful. I've asked our people to take a look at it as soon as it is available. Some of the federal studies in the area of justice from my experience don't always—I'm not suggesting this one won't—stand a great deal of close scrutiny with respect to some of the generalizations that are represented by them.

I do know that our provincial court judges, with the other judges—but particularly our provincial court judges—where about 95 per cent of the criminal cases are disposed of, have frequent seminars in relation to sentencing matters. If there is a public perception of significant disparity, this does not enhance public confidence in the system. I know our judges are very much aware of this, and this is why there are these relatively frequent seminars to deal with issues such as sentencing.

Mr. Breithaupt: Has there been any particular study which has been done within Ontario on these same themes, or have you allowed the senior judges of the divisions to have that responsibility in the expectation that they would ensure a balancing of these matters across the province?

Hon. Mr. McMurtry: I know of no recent study. We may have some helpful information

that will come out of the Goulard study. The centre of criminology, the Deputy Attorney General reminds me, did a study a few years ago in this area and that helped to encourage more frequent judicial seminars on this subject. But you can't avoid the reality that there may be certain judges who simply have a disagreement based on their own dictates of conscience as to what an appropriate sentence may be. One would never expect that to be eliminated, but quite apart from that, there can be public misconception in this area.

The facts of any individual case vary so widely. Much of my correspondence deals with matters of sentencing, and most newspapers have obvious limitations as to what they can report in respect to any particular case. Often many of the relevant factors in respect to any particular sentence are not reported in the local media, largely because of space limitations. The public does not always get an accurate picture as to just what the particular judge has taken into consideration. Sometimes this can lead to unnecessary misunderstanding.

Mr. Breithaupt: If I might be allowed one other item with respect to the royal commissions vote, I see that we have in supplementaries an extra million dollars with respect to the addition of funds to the \$2,337,500 already in the estimates for this vote.

I would like to hear some brief comments with respect to the spending and commitment of those funds. It would appear, of course, that much of that cost will be as a result of the ongoing northern environment obligation. I would like to hear from the Attorney General as to the breakdown of those funds and the expectations of additional costs or royal commission expenses in the coming year.

With that comment I am quite prepared to allow vote 1401 to carry.

Hon. Mr. McMurtry: I will ask the Deputy Attorney General to address this. He is more knowledgeable than I am with respect to this area, particularly with respect to the ongoing Royal Commission on the Northern Environment which I guess we inherited.

Mr. Breithaupt: That's a good word for it.

Mr. Dick: Mr. Chairman, as the minister has said, the commission was moved over to our ministry in December 1981. In the process the commissioner was moving to finish his inquiry by the end of the fiscal year, in March 1983. That was an acceleration of his timetable. While his estimates, as presented here, represented

what was his estimate prior to that date, as we moved towards an earlier completion date, it did require moving forward many of the expenditures he had anticipated for studies, for the public participation, support and things of that nature.

In that context, we did apply to Management Board of Cabinet to move a further sum of \$1 million into the estimates for this year, recognizing his new direction of completing by March 31, 1983.

Mr. Renwick: That's the northern environment?

Mr. Dick: The northern environment.

Mr. Breithaupt: So the northern environment matter will then be completed. Of course, we have the Popen matter completed.

The remaining major task with respect to royal commissions is then the health and safety program arising from the use of asbestos. When is that expected to be fully completed?

Mr. Dick: We understand that it is going to be reported within the present fiscal year. That would be March 1983.

Mr. Breithaupt: That completes all the ongoing royal commissions at the moment? Is that correct?

Mr. Renwick: No. There is the new one on high-rise fire safety.

Mr. Breithaupt: Yes, that's right.

Mr. Renwick: The royal commission was recently appointed. I notice there is still one in process, or maybe it's completed now, on the use of fuels containing polychlorinated biphenyls.

Hon. Mr. McMurtry: I was talking to counsel to the high-rise fire safety last night at a gathering at which several of us were present. He was saying they hoped to have their hearings completed by April, I think he said. We may get the report in the next calendar year. Certainly there's a good chance we'll get it in the next fiscal year.

Mr. Breithaupt: One would hope so.

Item 1 agreed to.

Items 2 to 5, inclusive, agreed to.

Supplementary estimates agreed to.

Vote 1401 agreed to.

On vote 1402, administrative services program:

Mr. Breithaupt: Mr. Chairman, Mr. Renwick has been most patient in allowing us to have much of the time this morning, so if he wishes to lead off on the legal aid theme, which is really the matter of interest in this vote, I am quite happy to have him do so.

Mr. Renwick: On vote 1402, I would be prepared to deal with the whole of the vote in an omnibus way, rather than try to split it down into items. I do not have a great many comments to report.

I will not either read it into the record or dwell on it at any great length, but I was perturbed by the concerns expressed in the Provincial Auditor's report, which we received yesterday, and which are set out at pages 21 and following, particularly with respect to the electronic data processing facility. I thought those were obviously serious considerations in the mind of the Provincial Auditor. I did take the trouble to read the minister's reply to it. Perhaps a comment in that area would be helpful to us.

12 noon

The second area that has been a pet concern of mine relates to your ministry, sir, and the Ministry of Revenue. I have raised with the Ministry of Revenue on a number of occasions that at a given point the responsibility for the collection of unpaid accounts due to the province with respect to fines and court costs should become a matter of collection by the ministry of the government that has the facility to do it. I made some comments very briefly in the estimates of the Minister of Revenue (Mr. Ashe), asking him to consult with you about whether or not this could be done.

I had put an inquiry on the Order Paper, to which I have now received a reply, in which I asked the ministry to advise me for each judicial district the total amount of outstanding fines which remain uncollected as of September 30, 1982, or the latest date for which the information is available. It was as of March 31, 1982, that the information was made available under each of the following headings: (a) municipal infractions; (b) Criminal Code offences; (c) highway traffic offences; and (d) other provincial statute offences, together with, in each heading, as a separate item, the court costs also remaining uncollected.

I'm not going to read the response into the record, except to say, leaving aside the \$22 million of fines and costs owing under the Highway Traffic Act—I am content to say that over the course of time on the plate-to-owner theory this will perhaps disappear as a major revenue collection problem—it is an immense amount of money owing, a goodly portion of which must be very stale-dated. I didn't bother to ask the ministry for stale dating because that might not be possible to collect. It was sufficient to get the omnibus amounts and to recognize

that a significant amount of that money has been owing for a long period of time to the province.

Under Criminal Code offences, there is some \$17.5 million in fines owing. Under other provincial statutes, there is \$6 million in fines and \$500,000 in costs owing.

Leaving aside Highway Traffic Act fines and costs outstanding, there is, roughly speaking, about \$24 million of fines outstanding under the Criminal Code and other provincial statutes. Again, a substantial part of this would be stale-dated from the point of view of collection. There is, in addition, \$8 million-odd of fines and \$3 million of costs owing for municipal infractions of one kind or another, which is not directly money owing to this government.

It is interesting that roughly, and I say roughly, half that amount is in the judicial district of York. For example, of the fines under the Criminal Code, almost \$11 million are York, and the complete total for the province is about \$17.5 million. For other provincial fines owing, there is about \$3 million from York in a total of about \$6 million. Give or take some mathematics, roughly half of it is owing in the judicial district of York.

My point to the Minister of Revenue was that if they, in theory, are responsible for collecting moneys owing to the crown, and the administration of justice is not great at collecting outstanding moneys which are owing, it may well be that at some point there should be a deliberate, concerted effort, jointly by the Ministry of the Attorney General and the Ministry of Revenue, to transfer to the Ministry of Revenue the obligation to collect the moneys.

In a time of restraint when moneys are hard to come by, and we'll be coming to the moneys hard to come by in the legal aid item, for example, there is a great untapped source of unpaid revenue to the province. That is a matter which has been a pet concern of mine for a considerable period of time and I wanted to raise it again with you.

Those were simply two matters. The only other matter that I have is the legal aid matter. Perhaps if you would respond to those two items then, as far as I'm concerned, we could deal entirely with the legal aid questions after that.

Hon. Mr. McMurtry: Dealing first with the unpaid fines, that is a problem that continues to bedevil the system, although, as you quite properly recognize, the plate-to-owner initiatives will certainly relieve a major portion of this

problem. People will have to pay their fines if they're going to be able to renew their plates.

This is one of the reasons why the ministry has been strongly pushing this initiative for some time, as has the Ministry of Transportation and Communications, notwithstanding some of the problems associated with it.

At the present time the simple fact is that the police forces just don't have the human resources to pursue many of the warrants of committal, and there are a large number outstanding. It does represent a very significant drain on police resources at the best of times and this is a major problem for them. This is why we're particularly concerned about plate-to-owner, which at least in the area of highway traffic offences will remove that problem.

Your suggestion in relation to the Ministry of Revenue is an interesting one. They certainly have more adequate collection resources in general terms. Whether or not they're going to be able to deal any more effectively with the type of problem we're dealing with in the criminal justice system and the provincial offence area is debatable.

I don't know whether Mr. Carter or the deputy would like to add anything more with respect to the collection of fines.

Mr. Carter: Mr. Chairman, one major problem we have is the issue of transients in and out of the province, particularly people who leave the province. We follow up and then lose track of those people.

Mr. Renwick: With the greatest of respect, I am talking about \$17.5 million in fines. I'm leaving aside entirely the Highway Traffic Act one. I'm talking about \$17.5 million of fines owing for offences under the Criminal Code and \$6.5 million of fines and costs owing under other provincial statutes.

With the greatest respect, I don't think that, or even a measurable part of it, is owed simply by transients. Even if I granted you 10 per cent, it's still a hell of a lot of money owing to the government which should be collected. It reflects seriously on the administration of justice if a person is fined and knows that, given good luck, he won't have to pay the fine, certainly not within any measurable period of time. That's my only point.

12:10 p.m.

Mr. Carter: The last status report on this indicated that the transient issue was a significant one. Our best bet would be to update our status report and share it with you.

Mr. Renwick: Well, there must be a lot of criminals coming in and out of this province—

Hon. Mr. McMurtry: No. They could be even transients within the province. I would interpret that a large percentage of these people—I would call them transients—are probably within the province. A fair majority of individuals who are subjected to fines tend to be people who don't have any particular stake or—

Mr. Renwick: Fixed place of abode.

Hon. Mr. McMurtry: —fixed place of abode.

Mr. Renwick: Like members of the provincial parliament. My point is simply that it should be looked into in some detail. If you come up and say no, the system which is in existence is the best one in the world, fine, I'll forget about it for another 10 years and raise it with somebody else.

Hon. Mr. McMurtry: I welcome your suggestions.

Mr. Renwick: I think it is a direct reflection on the efficiency of the administration of justice. The Minister of Revenue—strangely enough—expressed some interest in that. He seems to have an interest in collecting money and—

Hon. Mr. McMurtry: I'd be delighted to receive the assistance.

Mr. Renwick: —he may be more interested than the ministry which is engaged in dispensing justice.

Mr. Chairman: Thank you. Were those your questions on this vote?

Mr. Renwick: I don't really require an answer on the auditor's report other than to let the ministry know that they're pretty serious criticisms.

I know the Deputy Attorney General responded to the auditor, to say, for example, that the no smoking bylaw was being enforced and that the one computer operator who operated from his or her home and had 24-hour access to the computer facility—I gather most of those things are being looked into and corrected and that a proper venue for those matters is public accounts.

I did want you to know that we were sufficiently alert enough to look at the auditor's report. It makes very amusing reading. Some of it is kind of hazardous actually.

I'd like to know the residence of that person. I wouldn't mind having a terminal to connect into from time to time.

Mr. Chairman: I believe Mr. Breithaupt also has some questions on item 1.

Mr. Breithaupt: Mr. Chairman, my particular comment will be on the legal aid theme. I don't know whether we will have much opportunity to go into detail on the remaining items in the vote or not. Is it your intention, Mr. Chairman, to adjourn at 12:30 p.m.?

Mr. Chairman: No, we will run until one o'clock.

Mr. Breithaupt: That's just fine. In the 45 minutes remaining, we will be able to look at some of the legal aid issues as they have come up.

The situation with respect to the Ontario legal aid plan is one of ongoing interest to all of us in the Legislature. I was somewhat surprised at the Attorney General's view in his opening statement that within the building there were those who seemed not to have as strong an interest in and commitment to legal aid as he would have preferred.

When I look back at an interview which was reported on February 8 in the *Toronto Star* by Ellie Tescher, the Attorney General said: "Government does not allocate enough resources to justice in this province. We've always been the poor cousins of government. There is not much sex appeal in the administration of justice." The Attorney General is somewhat skilful—

Hon. Mr. McMurtry: Political sex appeal.

Mr. Breithaupt: It could well be political sex appeal. The Attorney General is not loath to make his opinions known and to achieve some editorial and public prominence in the media on a great variety of issues that interest him. To say that he feels ignored by his colleagues when it comes to the need for additional funds is an interesting comment on the clout the Attorney General may or may not have to get the funds for the administration of justice. I went into that theme in my opening comments. The funds available to this ministry are somewhat less than one per cent of the provincial budget.

There are themes under the legal aid program which particularly concern me. For example, the report by Professor Laureen Snider of Queen's University referred to the problems of the availability of legal aid clinics to poor people in the more isolated rural areas. When you look at another recent report of the opening of a free clinic for the South Asian community in Metropolitan Toronto by Shireen Hooshangi, you again see a particular area that has a need which is not otherwise being addressed.

I was quite surprised to read the comment that there are about 200,000 South Asians in the

Metro Toronto area. For people coming from a particular background and perhaps having language concerns, the availability of a legal aid clinic which deals with that portion of the community is something which is no doubt worthy of support.

So whether it is the rural poor or the matters of those of a particular societal background, we see an ongoing need for increased legal aid services.

It was reported that the legal aid plan was not able to pay some \$2.4 million on time in the month of October. I presume that much of that has been caught up, but I would like to hear a report as to the status of the accounts, and whether lawyers, who also have obligations to attend to, are receiving payments which are due to them as promptly as they should be.

One in three lawyers in Ontario, apparently some 5,000 of the 16,300 lawyers in this province, are involved in the legal aid program. As we know, they are making a contribution as a public service because of the reduction from the tariff of the fees they receive as the payment of their bill. One could question the legal aid tariff itself. A variety of people suggested a 30 per cent increase because the program is not up to date with respect to costs to be charged for services.

Not only is the tariff inadequate in the view of many, but the reduction of the 25 per cent figure is a further contribution which is being made by the practising lawyers. If we are going to be continuing that kind of program, then the least we can do is make sure the accounts are paid as promptly as possible. It seems to add insult to injury if accounts from a tariff, which is not as high as it should otherwise be, are delayed as well.

12:20 p.m.

James Chadwick, who heads the legal aid committee and who was referred to in this article, said there has been a 16 per cent increase in legal aid applications in the past few months. I would like to have a confirmation of that figure. Have there been particular pressures right across the province in the increase of legal aid applications? Can those applications be dealt with in the framework of the system we now have?

To go back to the comment with respect to that free clinic which is being operated, in this instance for the South Asian community, it seems to me that the need to do that and the inability to finance that kind of program are

things which should concern the Attorney General.

What are the implications if persons not qualified to offer advice, as they are in that instance, attempt similar projects without pay but also without the ongoing requirements to provide qualified advice?

The Attorney General should be concerned about those members who are pulling out of the legal aid system. Are more and more of the applications being attended to by a smaller number of lawyers within the province? In the more difficult economic times, a number of lawyers may find that the legal aid situation is a strong booster to their income and they may be quite willing to take on these cases. Others may prefer to spend their time in a variety of other particular pursuits.

It is quite apparent that no one can take on all of the aspects of the practice of law in our society today. The result of specialization may well be that fewer lawyers are going to be available to attend to legal aid matters. Part of the reason may be the tariff and part of it may be the delay in payment of accounts. It is unfortunate if those are the reasons why lawyers are dropping out of the program.

Refusal of certificates is often justified on grounds which seem to run somewhat contrary to the intention behind the creation of legal aid. I refer particularly to juvenile offences. It is reported to me that if juveniles are charged with criminal offences, some certificates are refused because, if there are convictions, there would be no particular threat of either losing their job, since the young people are often in school or in incarceration.

Those grounds should be reconsidered because it effectively removes counsel from juveniles who would not be able to afford to obtain advice to which I think they are entitled. This results in some pressure on juveniles to plead guilty to charges, for which they might have a reasonable defence, in the hope that the sentence may be somewhat more lenient. If certificates are being denied for those particular reasons, that is worthy of consideration. It seems to unfairly pressure juveniles who might otherwise be defending their cases with the benefit of some legal advice.

There are a number of other themes under the legal aid plan, but I am quite prepared to have my colleague Mr. Renwick make his comments on legal aid. Then perhaps the Attorney General will have the opportunity to reply,

and we can attend to this vote before we adjourn.

Mr. Renwick: I should like to highlight, as rapidly as I can, the points of interest and concern to me.

First, I would be most interested to understand what led the Attorney General to make such a dramatic statement about legal aid in his opening remarks. Why did he feel, at this particular juncture in history, he had to come out so strongly in support of legal aid, when many of us felt that battle was pretty well over with respect both to the establishment of the plan and to its funding, given that funding questions are always difficult ones?

He used his favourite expression in opening his remarks, "It saddened me to know that" so and so, which I heard again this morning in reference to my colleague, the member for Renfrew North (Mr. Conway), it saddened the Attorney General to know—

Hon. Mr. McMurtry: I shall try not to use that expression for the rest of the estimates.

Mr. Renwick: If this Attorney General has imprinted any phrase indelibly on my mind it is that one, "It saddens me to think that. . ." Even when I am not the object of the remark, I feel very subdued to think that whatever has happened in this place has made the Attorney General so sad.

Hon. Mr. McMurtry: It is a problem with the Irish, Mr. Renwick. We are on peaks or in valleys. We are either happy or we are sad; we never are much in between.

Mr. Renwick: I think all of us would like some explanation of that dramatic statement. Where is the opposition coming from? Is it specific? Is it from a number of areas? What is it that brought forth that very dramatic remark?

There is a second point I would like to make. I think that the easiest way is for me to put it on the record. All of the lawyers in the assembly, I guess, were subjected to a considerable amount of pressure to support a substantial increase in the tariff published in the regulations under the legal aid plan. When I was asked by my colleagues in the caucus what my position on it was, I simply responded this way:

The only position I have taken to date on this question is that the legal aid plan should no longer have an element of contribution by the legal profession as a matter of charity. The Legal Aid Act, being chapter 234 of the Revised Statutes of Ontario, 1980, contains the following provision—and I quoted subsection 22(1), which

makes the provision for the automatic 25 per cent discount of fees and disbursements established pursuant to the regulations.

I went on to say that historically there has been a traditional public service by the legal profession to people who have been unable to pay, and this element was carried forward into the Legal Aid Act when it was originally enacted, so that every lawyer's account for fees, as determined by the regulations made under that act, is subject to a discount of 25 per cent.

The provision of legal aid is a matter of right for every citizen who qualifies under the statute, and the lawyers participating in the plan should not, in my view, be required to continue to make this contribution.

You will readily note that it is only those lawyers who participate in the plan who are subject to this deduction in fees, and it is by no means a general contribution by the legal profession in Ontario to the support of the plan. It is therefore my view that this provision of the Legal Aid Act should be amended to delete the three-fourths limitation on fees for services rendered and that these should be paid at 100 per cent of the tariff at present established by the regulations. I believe that is the correct position for us to take.

That is my second point. I would like the Attorney General to comment about that, both with respect to the somewhat philosophical content of that remark and with respect to the question of whether or not the plan does not at this point require the support from the profession, which would more readily come if that 25 per cent discount were not written into the legal aid statute itself, with respect—

Mr. Breithaupt: Even with the tariff as it exists now.

Mr. Renwick: That is my point. I am not in favour of increasing the tariff. I am in favour of eliminating the 25 per cent discount, which would be a very substantial alleviation. Whatever its origin, that every lawyer was supposed to do some charitable work and that was it, the discount should be dropped from that regulation. That is the second point I wanted to make.

Needless to say, I was simply delighted to have the opportunity last night to talk with the former Deputy Attorney General, William Common, who was the one who prepared the background which led to the original introduction of the legal aid plan. It was a masterful scheme at the time and was far and away ahead of its time when it was prepared by him. I was

delighted to see him so well and so obviously in such good form.

12:30 p.m.

The third point is with respect to this Linden-Ewart report entitled, *Background Paper on the Implications of the Salaried Defender Concept for the Delivery of Criminal Legal Aid Services in Ontario*. I think that is a magnificent title for almost any kind of a report on it, but I am not certain where that now stands, nor do I have any real sense as to what the implications of that report are in so far as it bears upon both the quality of legal aid services in the province and this vexed question of adequate funding and servicing of people.

Related to that, I would be most anxious to be brought up to date, because I have no direct knowledge of it, about what has happened to the research facility of the legal aid plan, which was a very valuable initiative. I would like to have an up-to-date statement on where it now stands and what the future holds for it, because it was an attempt to provide a central facility that would allow lawyers practising under the legal aid plan to make efficient use of background and research facilities. I certainly would be anxious to know the present state of that facility and what the situation is with respect to it.

The point my colleague Mr. Breithaupt raised about the backlog of unpaid accounts and the immense period of time is one which intrigues me, because when the supplementary estimates came before us I thought that perhaps they would contain a number of dollars to deal with that, but they don't. When we dealt with the supplementary estimates at the end of the last fiscal year in the assembly, there was a \$3-million item of supplementary estimates which was designed to shorten the delay in payment of accounts from some estimate of 11 or 12 months down to six or seven months.

As I understand it, that problem is still not only a recurring one but a very heavy one which, I think, adds partly to the concern that members of the profession have about participating in the plan. I do not have much sympathy for it, but that is certainly one of the problems with relation to the plan. I would like to have some up-to-date statement on just what that delay period is, how significant it is and what the ministry is going to do to alter that situation.

My next point is with respect to the May 5 statement of a number of the clinics which was presented to the Attorney General, in which it was pointed out very clearly by the community clinics, of which he and I—I am glad to take

second place to him with respect to my support for the community clinic system, but he is the only one to whom I would. But there was a very positive, punchy presentation made to the Attorney General on May 5 with respect to the large percentage increase in applications to the Residential Tenancy Commission with respect to landlord applications for increases of rents, the additional burden that this was imposing on a number of clinics, including the clinic on which I sit, the Riverdale Socio-Legal Services committee, particularly, of course, on Metro Tenants' Legal Services and the impossibility, with the resources presently available to them, of being able to meet the demands.

It appeared from the Metro Tenants' Legal Services' position that they were only able to directly assist, in the way in which it was intended they assist, about 30 or 35 per cent of the cases. A number of other tenants had to be content with sort of a seminar briefing about how to deal on a rent review application. There was the immense problem involved, for an organization like Metro Tenants' Legal Services when they are approached with a whole building of many apartments, in trying to get an understanding of what the landlord's statements mean and what the assessments are with respect to operating costs, capital costs and, of course, what is front and centre these days, the financing costs.

They were pointing out, to the extent that they diverted the available resources of those clinics into this expanding, and indeed exploding, question of landlord-tenant rent review applications, they could only do it at the expense of other very necessary components of the work which was necessary. It is again partly because of that I am very interested in the essential quality of that research facility, both with respect to lawyers practising under individual certificates of legal aid and to understand whether or not that research facility is available, in any real sense, to the clinics with respect to their work load.

Because I became an admirer of hers when she performed a very difficult task—I am speaking of Ms. Mary Jane Mossman, who was the manager of the clinic funding office, from the time that the clinic funding committee was established, I suppose going back four years ago now, and who has now left that position—at this point I would certainly like to pay my tribute to the tremendous work she did, not only the background work in rationalizing the funding system, but in maintaining, on the whole, excep-

tionally good personal relations with the various clinics operating under their own independent boards of directors, and the intense interest she took in and the devotion she had to the community legal aid system.

This leads me into this question that there is an association of community legal aid clinics. One of the major questions which has been front and centre is to whether or not, under the Legal Aid Act and the regulations with respect to funding, it is possible to fund the association of legal aid clinics. Submissions have been made by the clinic funding staff to the clinic funding committee about their assessment that it would be possible, were the funds available, to provide each clinic with the dollars which could be used as membership fees in such an association, so there would be revenue for that association; that it is possible for the clinic funding committee to contract with the Ontario Association of Legal Aid Clinics for the provision of services through to the individual legal aid clinics.

There were submissions and further submissions made by the association of legal aid clinics. I would like the response of the Attorney General as to whether or not that concept of having an umbrella organization, which could play a major role in co-ordinating the work of the community legal aid clinics, perhaps providing services to them that are not necessarily available and some other matters, all of which are in documents, which are readily available. I have a set of those submissions, if the ministry does not have them, related to the association of community legal aid clinics which I would be glad to make available.

12:40 p.m.

I am interested to know whether there is any likelihood that a larger number of dollars could be made available from the law foundation to support the legal aid plan. I would like to have confirmation of whether or not the dollars provided this year to the clinic funding committee to fund the community legal aid clinics were the dollars requested. A year ago you were pleased to report to us that they had asked for \$5,470,000 and that is what they got. I am not certain what that figure is this year.

I would like to have your particular view about a problem with the expansion of the clinic funding committee—the conflict between the geographic distribution. It is quite a legitimate and necessary concern. There should be community legal aid clinics available on a geographic basis throughout the province so that everybody in the province has some kind of

access to them. I know Metro is reasonably well served geographically now.

The conflicts that come up could be called special clientele situations. One which immediately comes to mind, because I attended its fund-raising dinner a week or so ago, is the South Asian Community Legal Clinic. It made a submission to the clinic funding committee last year but, because resources were not available, the application was not accepted.

I thought it was a superb presentation, and I am sure the clinic funding committee thought it was too, but the funding was not available. The case seemed to be a very strong one, that where there is a South Asian community comprising people from Pakistan, Bangladesh, India, Sri Lanka, Malaysia, the West Indies, East Africa and South Africa—a large number of people with significant cultural adjustment questions coming into contact with our society on any number of phases of their work—it probably makes sense to fund such a clinic. I would come down strongly on the side of that, recognizing the problem about the geographic distribution of clinics which is up front and centre.

My last comment would be that if there are any problems with respect to the financial eligibility criteria established by the Ministry of Community and Social Services in its relation to the legal aid plan and because of those criteria, people are being denied access to the legal aid system through the certificate basis, then I would like to know about those problems. It appears to me that it has had two results. One has been that a number of people have been denied legal aid certificates because somewhere, in something called the family complex, there is believed to be available resources to meet the legal expense when there is no obligation.

For example, there is no parental obligation to a person charged with a criminal offence who is 18 years of age. There is no legal parental obligation to provide for the legal defence of that person. Meritoriously or from some point of view, people say they should do it, but I wouldn't want to think there are people being denied access to the legal aid plan who are charged with criminal offences because the guidelines are not adequate to permit adequate representation.

The other problem is that when you deny access to the certificate part of the legal aid plan to relatively impoverished people, it adds to the burden which is imposed on the community legal aid clinics with respect to the work which can be done. That's quite a mouthful, but those

are the major matters that I would appreciate a response on from the Attorney General. Whether I get it today or in some synoptic way on another occasion is fine with me.

Hon. Mr. McMurtry: Mr. Breithaupt referred to my concerns with respect to inadequate funding, that the justice system is in my view, to some extent, the poor cousin of government, as far as government-wide priorities are concerned.

I became Attorney General in October 1975, so the first budget I had to take direct responsibility for was the next fiscal year, 1976-77. The figures provided for me would indicate that our budget in the six intervening years, from 1976-77 to 1982-83, has increased 97 per cent, whereas the overall government budget during that time has increased 76 per cent. The budget for the Ministry of the Attorney General has increased at a somewhat higher rate than that of the government as a whole.

I have to say, in fairness to my colleagues who have other concerns and in reference as well, that in the overall government operation we have accelerated at a higher rate than many other ministries. One of our problems is simply the fact that we start with a bit of a modest handicap.

Mr. Breithaupt: I think that's a fair way of saying it.

Hon. Mr. McMurtry: There is certain amount of catch-up that still has not succeeded to the extent I would like.

Our legal aid budget during that same period has increased by 109.2 per cent. Again relating it to the overall government increase of 76 per cent, it would indicate that despite our ongoing problems, it has been given a priority.

Of that, the clinic budget in 1981 has gone from \$4.6 million to \$6.9 million, almost \$2 million, in this current fiscal year. The \$6.9 million figure for this current year reflected what was requested. I designated a total amount that I request to the legal aid clinics. There is no question that I am concerned about the future of legal aid. Some of this concern has prompted my remarks, but I hasten to add I have always been quite outspoken in support of legal aid. I don't think these remarks, while perhaps a little more extensive than in the last several years, necessarily represent any significant, let alone dramatic, departure from what I've said over the years.

12:50 p.m.

I am concerned about the future of legal aid. I was almost tempted to use the word "saddened"

again. The truth of the matter is I have, over the past seven years, been perhaps a little saddened by the fact that it has been my personal perception that legal aid has never had the community support it deserves, nor has it had the support, I say to our legal colleagues, in the legal community that it deserves.

Those who participate actively in the plan are generally quite supportive. The reality is that the great majority of lawyers do not participate in the plan. The level of support varies between individuals, but I have to say the level of support of the majority of the profession that does not participate in the legal aid plan, in my view, has never been particularly high. The lack of sufficient support in relation to what the plan has achieved is reflected, as one would expect, in the views of some of the members of this Legislature, but not only in my own caucus.

We are engaged in a very tough estimate process. In the little over seven years that I've been here they've all been tough, but I would say this seems to be the toughest year yet, judging by what has happened to date. I am a little concerned about the potential vulnerability of plans such as the legal aid plan that don't enjoy the wholesale public support that many other government expenditures enjoy. The public would like to see us spend more money in most other fields. Health, education and social services are areas of concern on a day-to-day basis.

It's interesting that Mr. Breithaupt, in the context of the administration of justice as a whole, referred to the series the *Toronto Star* did. They devoted a week to a series done by Ellie Tescher on the administration of justice, with a high degree of promotion in relation to the problems facing the administration of justice. The articles were, on the whole, very well written and given great prominence.

The disturbing thing to me was, notwithstanding the fact the articles were fairly well written and presented in a fairly dramatic fashion with a great deal of fanfare by Canada's largest newspaper in the Toronto area, that I don't recall receiving one single letter generated by people reading these articles. There may have been one or two, but I honestly cannot recall a single letter.

That, to me, was absolutely astonishing. I would have thought, given some of the concerns that were expressed, given that everyone recognizes or at least pays lip service to the fact that the administration of justice is one of the most essential cornerstones of a democracy, this

would have provoked more public interest as far as people sitting down and writing letters were concerned.

I realize that many people are reluctant to write letters, even though they may be concerned, but it does indicate, at least in a small way, the traditional problem that we've faced and that all attorneys general have faced in every jurisdiction I am aware of, when it comes to securing adequate funding for the administration of justice. While the public continues to pay lip service to the importance of high-quality administration of justice, their personal priorities often lie in other directions, for very human reasons. Most people obviously don't want ever to be caught up in the justice system.

It does demonstrate the problem and the extent of the challenges we face in such an age. Where taxpayers' dollars are increasingly difficult to come by with respect to the many legitimate needs of the community, there are programs that may be a little vulnerable. This was demonstrated by what happened in British Columbia where it was not a question of the rate of increase of the legal aid budget, it was simply cut back.

I have always attempted to be very frank in the estimates process in sharing with my colleagues my concerns when I think there is a potential vulnerability. At the same time, I hasten to add that I hope I am being unduly pessimistic. I just felt it was appropriate to make it abundantly clear as to just where I stood on the issue of this very important program.

I was interested in the comments made with respect to the legal aid tariff. There was a suggestion that rather than increasing the tariff, as has been requested by the Law Society of Upper Canada, that some of the shortfall be made up by eliminating the 25 per cent contribution. It seemed to be an important philosophical approach in 1968; I can understand why.

As of 1968, I had been 10 years at the bar and had been quite accustomed to doing a great deal of legal aid work, mostly in the criminal field, on the basis that any other lawyer did it. That was it was strictly—I don't like to use the word charity—a free contribution of time.

I think many of us in that era felt it was a reasonable expectation of lawyers who had been provided a certain professional monopoly that they give up a certain percentage of their time. I don't think any of us—and there were many, including people in this room—ever resented that philosophical approach. I'm sure that was reflected in the decision to establish a

tariff that would represent a relatively modest fee for work done and then to reduce it by 25 per cent to represent the contribution of the lawyers.

Mr. Breithaupt: Coupled with that was the expectation, or at least the presumption, that nearly all the lawyers would be involved in the legal aid system and therefore each would be making a shared contribution in that sense. When the numbers of those who are involved seemed to be less, that principle gets somewhat harmed.

Hon. Mr. McMurtry: I wasn't party to the deliberations that led up to 1968. As a matter of fact, I am on record as saying the while the plan was obviously an excellent idea, I expressed the opinion as an individual practitioner that we should not necessarily jettison the concept of lawyers continuing to contribute freely of their time without fee.

Mr. Renwick: I agree with it. It was very valid at the time. It was accepted without question. I question whether or not—

Hon. Mr. McMurtry: I would not have anticipated that there would have been a great, broad participation even in 1968. It is a while back, almost 15 years ago. It does not come as a great surprise to me that there was not that wide a participation.

Actually, some lawyers who participated in the plan—I am sort of reminded of this by your remarks, Mr. Breithaupt—suggested that perhaps the lawyers who do not participate in the plan should make a financial contribution to the plan to make up for that. In view of the fact that their colleagues are contributing 25 per cent of their fees, there should be some similar contribution by the rest of the profession.

It is one o'clock, Mr. Chairman. I would just like to finish by saying that I have no strong philosophical views that that 25 per cent should be maintained, given the realities of 1982. At the same time, I am also aware of the reality that, as far as the central agencies of government are concerned, they are more interested in the bottom line than whether lawyers are contributing 25 per cent or not.

Mr. Breithaupt: It is probably fair to say you are saddened by the loss of that contribution theme.

Hon. Mr. McMurtry: This might be an appropriate time, Mr. Chairman. There has been a number of other interesting issues raised.

Mr. Renwick: There are still some questions there. Perhaps at the beginning of the next

session we could briefly resume some of this legal aid discussion.

Hon. Mr. McMurtry: I have a note that there are a number of issues that have been raised that I hope to deal with tomorrow.

Mr. Chairman: Fine, thank you. We will carry on tomorrow following routine proceedings. We are in the midst of vote 1402.

The committee adjourned at 1:03 p.m.

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Ontario

LEGISLATIVE ASSEMBLY

No. J-15

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Thursday, December 9, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 9, 1982

The committee met at 3:47 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

On vote 1402, administrative services program; item 1, main office:

Mr. Chairman: Gentlemen, we have a quorum. We will reconvene the estimates of the Attorney General. We have seven hours and four minutes left.

The Attorney General was replying to Mr. Renwick, regarding legal aid matters and vote 1402 generally. Would he please carry on?

Hon. Mr. McMurtry: Yes. Mr. Chairman and colleagues, I want to give an overview, although in some cases I will deal with them in greater detail, of the many important questions that were put forward by Mr. Renwick with respect to legal aid.

One of the items that was raised was the availability of clinics—

Mr. Renwick: Mr. Chairman, was the minister also going to make a statement on the abortion question?

Hon. Mr. McMurtry: Yes, at some point today.

The first item I want to deal with is the availability of clinics, particularly for people in isolated communities. This is, of course, an important issue, but a difficult problem, because obviously low population densities make full-time staffing somewhat difficult. The clinic funding committee does fund clinics which make use of satellite offices, including, for example, the Queen's rural legal services and a number of northern clinics. As needs are articulated and funding permitting of course, the community legal aid funding committee will continue to seek means of meeting these needs, because there is no doubt that they exist.

Another item that Mr. Renwick raised was the funding of clinics to ethnic minorities. In particular, he mentioned the South-Asian Community Legal Services. I am advised that the funding committee dealt with five new applications in this fiscal year but they had sufficient funds for only two additional clinics. For this

group of public-spirited individuals from the South Asian community, they did, however, offer to fund one legal aid worker in any clinic of its choice to concentrate entirely on issues related to the South Asian community.

3:50 p.m.

Mr. Breithaupt: That worker then would go to that clinic?

Hon. Mr. McMurtry: To an existing clinic. That was apparently turned down. Again, I would say for the record that this group, of course, is free to apply again, so far as whatever funds may be available for the next fiscal year.

Another item that was raised is the availability of clinics in a geographic distribution. Of course, this is again a matter of resources, but increasing the geographic distribution is certainly one of the funding committee's prime considerations.

Mr. Renwick also asked for a status report on the cash flow requirements for the shortfall experienced in October and November. I am advised that we advanced to the plan \$1.2 million on November 1 and \$1.2 million on December 1 to meet their cash flow requirements.

This extra requirement came about as a result of a 13 per cent increase in the number of applications over last year, and a six per cent increase in the average cost of an account. Also, I am advised that the speed with which lawyers submitted their accounts increased, which I suppose is not surprising, given the economic challenges facing the legal community.

There is also a problem related to the fact that the law foundation is providing less money than last year. I am advised the figure is \$9 million as opposed to \$11.5 million through the interest on trust accounts, and we may face a further decline in the next fiscal year.

As for the question relating to the status of the legal aid tariff, this, of course, has been under review for some months. We are seeking additional funds from Management Board for an increase, but any increase will be less than the 30 per cent requested. We would like to move to annual tariff increases to eliminate the problem of erratic and irregular tariff increases that the legal aid plan has faced.

There has also been an important ongoing study with respect to the administration of the plan, which we hope will provide some savings and justification for a tariff increase.

Regarding the increase in the number of legal aid applications, for the first seven months of this year, it is up 13 per cent on average over last year. We have these figures only up to October 31. I am also advised that there are significant regional variations. The number of applications has increased 37 per cent, for example, in the London area, 29 per cent in Windsor, and 36 per cent in Sault Ste. Marie, but only seven per cent in Metropolitan Toronto. In Ottawa, the number actually has declined by four per cent.

There was some concern expressed about lawyers pulling out of legal aid. Our information is actually that more lawyers are participating in legal aid at this time than on any earlier occasion, and the average age and experience at the bar has increased—the participation of lawyers, for example, with more than 12 years' experience.

Mr. Renwick also asked for a status of the Linden-Ewart report. Actually, this report was motivated by some discussion with respect to the possibility of some form of public defender system to complement the existing legal aid plan. I am sure Mr. Renwick will recall the main finding is that a public defender system is not, in the words of the authors, inherently worse or better than what is happening here at the present time. We do not see any real difference with respect to the actual costs, but we still believe that some features of the best public defender system might be considered.

Following this report, a joint committee of representatives of the law society and the ministry was established. A number of the recommendations has been implemented, including the criminal law research bank, which has proven to be quite a success.

Mr. Renwick did ask me a question—Mr. Ewart is here—about the accessibility of the law clinics to the research bank as opposed to lawyers who are acting on certificates. I do not really know the answer to that; perhaps Mr. Ewart might like to be beside me for this part of the discussion.

I am sorry, I have a note from Mr. Ewart actually providing an answer to that. I said that it had worked out very well and apparently it is available to clinics. In effect, it is available to all lawyers conducting criminal cases for legal aid clients.

Mr. Renwick: If it is convenient, I have a couple of questions.

Mr. Ewart, to what extent is it being used? Have you any information respecting its use by the clinics? Second, is it the kind of facility that can be used by the clinics on the question of the large increase in rent review applications?

Mr. Ewart: On the second part, no, because it is available only for criminal law. It deals only with criminal law and the clinics, of course, get into that a little bit when they are dealing with summary conviction matters which can raise some of the main issues as a more serious offence. Certainly, in matters such as rent review the research bank would be of no assistance. If they need access to it for a criminal law point, they are given access to it.

Mr. Renwick: Is that a structural problem or could it be adapted to provide assistance to the clinics in residential tenancy review applications?

Mr. Ewart: You may not need the complexity of a research bank. It is a very sophisticated system, probably the most sophisticated computer research facility, certainly in this country and maybe anywhere, because of the volume of criminal material and the rapidly changing nature of the cases. You would not need that for rent review but, theoretically, if there was enough need to have computer access to decisions, there is no reason why, cost aside, you could not set up a computer system. You may not need one, in the light of the limited nature of the jurisprudence.

There has been some thought about moving the research bank into the family law area, for example. It has a lot of the characteristics of criminal law in terms of volume and the evolving nature of the grievance. That is something that is under review, but no action has been taken.

4 p.m.

Mr. Renwick: What about the first question, to what extent is it being used by the clinics as distinct from the private practitioners at the bar operating under certificates?

Mr. Ewart: Quite limited again, because the clinics do not do legal work that is capable of being done by the private bar on the certificate side. Only where a clinic was handling a minor matter, or a summary conviction matter that raised a criminal law issue, would they have recourse to it. They do have ready access to it, and they have had the use of it on occasion.

Mr. Renwick: Where is it?

Mr. Ewart: It is at the head office of the legal aid plan, 145 King Street West.

Hon. Mr. McMurtry: Another recommendation that has been implemented is the mentor system, where senior lawyers assist junior lawyers in handling legal cases. This system started in Metro and has now been expanded to Hamilton. A hot line for emergencies has also been implemented in relation to this system, if young lawyers require assistance in a hurry.

I might digress for a moment, I can recall when I was just two months out of law school and I was handling a rape case in front of Mr. Justice Wishart Spence. Henry Bull was prosecuting. It was a difficult case. I had been addressing the jury for about 10 minutes when one of the jurors, unfortunately, had a heart seizure and collapsed. Of course, I was faced with the problem of just what to do in those circumstances.

As you know, there is a provision for going on with 11 jurors with the consent of the accused, but while the late Henry Bull and Wishart Spence thought this was a matter which should not delay the proceedings for more than a minute and a half, I felt it might require a little more thought.

The obvious question I had to ask myself was whether my client would be better off dealing with this jury or with a jury in a retrial, to which he would automatically have been entitled. I certainly would have liked to have had a hot line for assistance on that occasion.

We adjourned the court, and I went charging down Bay Street and into the offices of G. Arthur Martin. I caught Mr. Martin just as he was heading out for lunch but, being the gracious gentleman he has always been, he immediately took his hat and coat off and went back to the office, where we had a good chat about the case. That early experience has always impressed upon me the obvious advantages of having senior counsel available to young counsel, particularly in serious cases.

I am glad to report that we went on with 11 jurors, and that our client was acquitted. We had quite an elaborate ceremony. Some of the senior criminal law people here are scowling a little bit, but—

Mr. Breithaupt: All you have ever sought has been justice with costs.

Hon. Mr. McMurtry: Mr. Martin gave us some very good advice. That was to sort of stage a little ceremony in the courtroom, to make it clear to the jury that the accused was aware of

this alternative, either to trust the case to this jury or accept a new trial. So, much to the annoyance of Mr. Bull, we had the signing of the consent done in the presence of the jury, but it was good practical advice.

Mr. Dick: With a little speech about your faith in the jury system.

Mr. Renwick: Just before we leave that research facility, is there any pending change in the nature or structure of that facility, or is it just going to continue to operate the way it has been operating? I have heard, by way of ethereal rumour, of something called "privatization of the research facility." I've never understood either what the term meant or how it applied to the research facility.

Mr. Ewart: It simply refers to the question of whether the research facility could go into the business of selling its opinion to the private bar on non legal aid cases. It is something that involves the questions of jurisdiction under the Legal Aid Act.

From the law society's point of view, there are some matters of principle about whether they want to get into that kind of business as the law society. It's something we've been discussing with the client and they've been discussing with the law society. It's something we are pursuing.

Mr. Renwick: Who is "we" and who is "they"?

Hon. Mr. McMurtry: I think it's fair to say that we in the ministry are generally interested in the idea, because it is a revenue-producing resource. So it is fair to say, Mr. Ewart, that we are generally supportive of the idea. It's basically just selling the research that is there to lawyers who are engaged in a case on a private retainer.

Mr. Ewart has stated that the law society has expressed some concern about whether it should be associated with that type of commercial transaction. I don't know all the dimensions, but—

Mr. Ewart: The only other dimension to it is the question of the authority under the Legal Aid Act for the plan to actually go into the business of selling opinions, and that's something we are having a look at.

"We," by the way, is the joint committee, which was established in 1979 as a result of the report. Mr. Carter and I served for the ministry, and the chairman of the legal aid committee, Mr. McCourt, who is here, served for the plan along with Mr. Robert Carter, QC. We would meet fairly regularly and fairly often on a range

of issues, and this is one which we still have under active consideration.

Mr. Renwick: I have no hesitation in thinking that the private bar, operating outside the legal aid certificate deal, probably does need such a facility. However, this facility was developed specifically with respect to the legal aid plan, particularly in view of the areas of expansion available to that facility to assist not only the practitioners with undercertificates but with the development of this community legal aid clinic system, as the Attorney General has noted in his opening remarks.

If the facility is not necessarily geared to the needs of those clinics, I would think that the direction which the facility should take would be towards accessing the adaptation of the research facility to other fields, such as you mentioned—not only family law, but a number of other fields; workmen's compensation, rent review, and the accounting problems with respect to the demands made on the community clinics.

I haven't particularly discussed that with anyone, but my offhand reaction in raising the question was to express a concern that this facility is one which the legal aid system needs, and one which the community legal aid clinic needs far more than the private bar. If the private bar needs it, it is up to the private bar, through the Ontario Bar Association, to explore that aspect of it. However, to divert that research facility to the private bar in its private work would, I hope, take an awful lot of thought. I do hope perhaps, sir, that you would—

Hon. Mr. McMurtry: That was not the intention. It was just that if there were opinions on the plan—and there were a number of excellent opinions through this research bank on a very wide variety of legal issues—it would just be an administrative question of making those available, in return for payment of a fee, of course, to members of the private bar. The idea behind it is that it would increase the resources available to this research bank, rather than divert its purpose of serving—

4:10 p.m.

Mr. Renwick: If it were a passive question, that the information is there and someone wants to buy it and pay for it for private purposes without interrupting the ongoing development of the facility as a public facility, I just wanted to express my concern about it.

I sit on that Riverdale Socio-Legal Services board, and have from its inception, and before that at Woodgreen Community Centre. I know

that with some thought and attention, the facility could be of much greater help. I'm speaking from a significant degree of interest, but it's also a significant degree of ignorance about how it could be adapted or expanded to cover those clinic needs. The clinics desperately need additional resource facilities to meet their case loads, as I see it.

Hon. Mr. McMurtry: The next recommendation that has been implemented is a panel classification, in effect a point system in Metro to govern access to the criminal panel and to the senior designation, which is made known to persons charged with serious offences who do not have a lawyer in mind.

There is also a pilot project in Ottawa in which staff social workers are available to defence counsel to assist in the preparation of noncustodial sentencing options.

Another matter that was raised by Mr. Renwick deals with the May 5 statement concerning rent review workers. This was the result of a meeting of senior ministry officials with clinic representatives on May 5. At that time, the clinics agreed to obtain more precise data on where the workers were needed and specifically how many would be required—information of that kind.

That information has not been submitted to us, and recently when the funding committee was able to make available three additional staff positions it did not appear to the committee that the applications focused on rent review. Indeed, the Metro Tenants Legal Services withdrew an earlier request for additional staff, we think very responsibly, because recent turnover had created training needs.

The next item was the funding for the association of clinics. I know, as Mr. Renwick appreciates, that the association can be funded only to the extent that it facilitated the provision of legal services. The funding committee has agreed in principle to allow clinics to purchase services by co-ordination of training or information sharing from an association, but we do not think it is the mandate of the clinic funding committee at this time to provide any core funding for the association directly.

The issue of financial eligibility—

Mr. Renwick: Did they consider at all the question of providing each of the clinics with the funds by which they could join such an association and, in a sense, fund the association that way? Is that an aspect that they turned down?

Hon. Mr. McMurtry: I don't think that has been considered.

Mr. Ewart: In the sense that this was how they wanted to fund it, our decision was essentially that we would consider requests for money to individual clinics, but only to allow them to buy services, not to allow them to sustain an organization.

If they want to centralize research, in the event that they don't get a research facility attuned to their needs, they might be able to buy research from the association, which might provide the funding for a worker to co-ordinate research, just as the research bank does for the private bar.

We're waiting for applications, which I assume will come in—the funding cycle is just starting now—to see whether there is a request for sums of money for that purpose.

Hon. Mr. McMurtry: The next issue is that of financial eligibility. The legal aid plan established a committee on this chaired by Professor Ron Ellis of Osgoode Hall Law School. Earlier this year, Professor Ellis and his committee met with officials of the Ministry of Community and Social Services and our ministry, and I am advised that substantial agreement has been reached on many of the concerns raised by Professor Ellis.

The government officials have submitted to Professor Ellis a detailed proposal for revision of the system, and we're presently awaiting a response from him.

The application of eligibility standards in juvenile delinquent proceedings: At present the legal eligibility test for a juvenile requires the likelihood of a loss of livelihood or a possibility of imprisonment. This is set by statute and affects priorities established for legal aid resources. Availability for legal aid for young people charged with federal offences under the Young Offenders Act, of course, will be somewhat different and the mechanisms are now under review.

The delay in payment of accounts: Under the existing system I am advised that the optimum period, the very best possible response, is a period of five weeks between receipt of account and mailing of the cheque.

In May 1982 the management committee approved the offer of the Ministry of the Attorney General to conduct a systems analysis and computer study of the administration of the legal aid plan. A consulting team has been retained by the ministry, and a team from this firm is presently reporting to the management

committee, preparing recommendations and outlining alternative methods of automating the administrative procedures of the plan, including the operation of the legal accounts department.

On April 1 of this year the delay was 6.5 weeks, but at present the average delay is now 10.5 weeks, and of this seven weeks is required to process the account, with 3.5 weeks being attributable to our cash flow problems. To return to the April 1 delay period would require an injection of more than \$9 million at the present time. I'm advised that to simply maintain the present period will require a substantial injection of funds.

The last item we made note of, Mr. Renwick, was the ability to increase the percentage of Law Foundation of Ontario funds to legal aid. I may have touched on that when I mentioned that the funding is down.

I was talking to two of the members of the law foundation as recently as last evening, inquiring about just how they're handling the many requests. Of course, with the many requests from universities, they're having a very difficult time just maintaining the level of funding. I think these are important initiatives, this 25 per cent. I would like to maintain it at that.

We are also very interested, as you know, in the development of the Osgoode Society for the Writing of Legal History, and have a modest interest in seeing that organization being properly funded.

If there are no other questions arising out of my responses, I was going to turn to my prepared statement with respect to Mr. Renwick's question on the accessibility to therapeutic abortion committees, and how this might relate to the provisions under the Criminal Code.

Mr. Breithaupt: Mr. Chairman, perhaps before we do that, we could go through the formality of carrying this vote, if you wish to.

Mr. Chairman: Carry this entire vote, or item 1 only?

Mr. Breithaupt: Item 1 of the vote at this point. I did want, before we completed this item in the vote, to once again underline the support, which we certainly have, of the legal aid program.

Those of us who have looked at the variety of publications that have come before us, and these publications, particularly the articles Marina Strauss has done in the *Globe and Mail* with respect to the needs in rural areas and the interest in increased tariffs, as well as the submission we have received from the legal aid clinics as to their needs and interests, are things

which I hope all members of this committee would support.

4:20 p.m.

Looking at the most recent legal aid letter that has come to my attention, there seems to be a continuing concern with respect to the tariff increase. That is one aspect. The other, which was raised by our colleague Mr. Renwick, concerns the wiping out of the 25 per cent contribution. That might be another way of dealing with this matter.

There are great interests on the opposition side of the House with respect to the ongoing development of programs that are going to serve the rural poor and the programs that are going to deal with a variety of other interests the Residential Tenancy Commission theme brings to the operation of the clinics that are there now.

I have cited the South Asian project and it has been discussed. While it has not been funded, it at least had the offer of a staff person as was described today, although that offer was not accepted. I would hope the Attorney General will go back to his cabinet colleagues or the members of his caucus who are not as able at this point to support increased funding and remind them of the needs that are there. There is an interest on our side of the House that additional funds be provided in this particular area to support and assist those persons who are least able to deal with the economic difficulties of our current economy. I hope and I know he hopes that a balance can be achieved.

On this side of the House, we continuously support the legal aid program as it has been developed. Before this item carries, I think that should be clearly on the record. We support the Attorney General and the work he has done in developing the framework of legal aid. In the seven years in which he has been involved, I think it has if not flourished at least blossomed and matured. We look forward to increasing support. It will have our full assistance, should the occasion arise.

Hon. Mr. McMurtry: Thank you, Mr. Breithaupt.

Mr. Chairman: There being no further discussion on vote 1402, shall item—

Mr. Renwick: Just half a second. I just found this so amusing, whether it's true or not. I'm not begging a discussion.

Before the whole vote carries, the annual report of the Provincial Auditor says under the heading of this finance and services branch:

"Application systems development: Application systems development services were being performed under an agreement with a programmer on a part-time basis. The programmer normally worked at home and by using a portable terminal and an acoustic coupler with dial up facilities, could access the ministry computer at any time. Instances occurred where the programmer remained connected to the computer for several days."

I seldom find much humour in the auditor's report, or I haven't before, but I did think that was worth recording.

Interjections.

Mr. Breithaupt: Another breakthrough for science.

Item 1 agreed to.

Items 2 to 8, inclusive, agreed to.

Vote 1402 agreed to.

Mr. Chairman: I have a couple of things. First, the Attorney General has his statement on abortion. Mr. Renwick is asking if Messrs. Johnston and McClellan might be worked in without being too formal as to votes and items. They were on the schedule over the past few days, but were tied up elsewhere.

Is it the wish of the committee that they be permitted a certain looseness with regard to the items and the topics?

Mr. Mitchell: That's rather a leading comment, isn't it, Mr. Chairman, "a certain looseness"?

Mr. Breithaupt: I can't think of two members who are more loose than those two, so we can probably accommodate them.

Mr. Brandt: We have such a spirit of co-operation going now we wouldn't want to waste it.

Interjection.

Mr. Breithaupt: Perhaps we could deal with the three items in sort of an interregnum between the votes.

Mr. Chairman: Perhaps the Attorney General would go ahead with his statement, since it's been handed out, and then Mr. Johnston can speak.

Mr. Renwick: I am quite happy to have the Attorney General proceed, but I have had the benefit of reading his first opening paragraph. He thinks the suggestion he refers to in that paragraph came from me. I want him to understand that it did not come from me.

What I said to the Attorney General very specifically on the question of abortion was that

the issue Dr. Morgentaler has raised reflects upon the access to hospitals with hospital committees under the Criminal Code. My point had nothing to do with either approving or disapproving of Dr. Morgentaler.

My question was a very simple one: If an act which is otherwise unlawful is justified if done through a hospital committee authorized under the code with respect to therapeutic abortions, doesn't the Attorney General have an obligation to see that hospital committees are established at the various hospitals throughout the province to permit a degree of accessibility wherever one is within the province?

I do not happen to have my statistical figures here at the moment, but my recollection is that the careful assessment of what statistical evidence is available, and a review of the access throughout the province, would indicate that something like 36 per cent of the hospitals or the institutions which are recognized under the code have committees. Therefore, as the chief law officer responsible for the administration of the code, does he not, in consultation with the Minister of Health, have an obligation to see that there is that degree of accessibility to all women in the province?

I want to make it as clear as can be—and I believe the record, when and if we get it, will make it perfectly clear—that I am not a supporter of free-standing clinics of the Dr. Morgentaler style, nor am I one who wants Dr. Morgentaler to be granted immunity from prosecution.

Excuse the interjection. I am fortunate that I saw the first paragraph of the statement, because I would not want to have had any misunderstanding of the question. My question is directed simply to the fact the code provides for hospital committees. The question of access is raised front and centre as to whether hospital committees are available. The information is that they are not available generally across the province.

Mr. Breithaupt: When it comes to justification.

Mr. Chairman: Yes.

Hon. Mr. McMurtry: I appreciate Mr. Renwick's remarks. As I said, I am not going to discuss what I may have understood or misunderstood—

Mr. Renwick: But we would not want to be misunderstood.

Hon. Mr. McMurtry: Several questions had been raised with me, many through correspondence, that would indicate the issue of accessi-

bility is one that should influence the Attorney General with respect to the exercise of his prosecutorial discretion.

I thought it was a sufficiently important issue to use this platform to respond to the many people who are raising it. It is really for that purpose and for that reason that I have gone to the trouble of making a prepared statement which will undoubtedly be distributed, judging by the enormous volume of correspondence I am getting. I should like to place myself squarely on the record.

As I say, I do not take issue with anything Mr. Renwick has said about the purpose of his question. After I read this statement, I will respond more directly to Mr. Renwick's question.

Mr. Renwick: Thank you.

4:30 p.m.

Hon. Mr. McMurtry: At this time, I wish to respond to the suggestions that have been made that I should use the prosecutorial discretion vested in the office of the Attorney General to promise Dr. Henry Morgentaler freedom from prosecution if he contravenes the Criminal Code of Canada by establishing abortion clinics in Ontario.

I believe this suggestion, although honestly motivated by deeply-felt concerns, dangerously confuses two important issues and fundamentally misrepresents the nature of prosecutorial discretion.

I understand the concerns of those who would find it unjust if some women in Ontario are denied access to hospital therapeutic abortion committees merely because of their place of residence or their economic resources. I think these concerns merit careful study in order that all the relevant facts can be placed before the Parliament of Canada, which exercises authority in these matters. In an area as emotion-charged as this, I believe it is vital that the facts be clarified before painfully achieved public policy is placed into the crucible of reconsideration.

My personal feelings on the availability of abortions in Ontario are, and must be, entirely distinct from my obligations as Ontario's chief law officer of the crown. It is my obligation to ensure that the criminal laws of this country, as established by the Parliament of Canada, are fairly and justly administered. It is not my function to thwart, nor would it be in any way appropriate for me to attempt to thwart the will of Parliament by declaring my unwillingness to prosecute any particular class of criminal offence.

Prosecutorial discretion has never been and could never be tantamount to the power to license criminal conduct on an ongoing basis. That way lies anarchy and the replacement of the rule of law with the whim of man.

The discretion to decline to prosecute in the face of evidence of a crime is not a power which is to be exercised in relation to a general class of cases. It is to be exercised only in the rarest of cases, where in the particular circumstances of an individual accused facing a specific charge, the public interest overwhelmingly demands that the prosecution not proceed.

Although the emotion which surrounds the issue of abortion sometimes clouds this matter, consider the position of an Attorney General who declared that he would not prosecute rape charges, or theft charges, or any other class of offence. Our society could not withstand that kind of defiance of the will of people as expressed by their representatives in Parliament.

Where abortion is concerned, it is crucial to understand that the federal government, exercising its exclusive criminal law authority, has made it a crime to perform an abortion other than in a licensed hospital, with the consent of a therapeutic abortion committee. That, as we know, is the law. If individuals feel the law is unjust then they have every right to work to change it, but they should not expect the chief law officer of the crown to contradict it.

Ontario's policy on the prosecution of criminal offences has always been to permit any police officer or any other person to lay any charge he or she has reasonable and probable grounds to believe has been committed. Neither the Attorney General nor his agents attempt to control or prevent this basic right. If a justice of the peace, exercising unfettered discretion, decides that there is sufficient evidence for the charge to proceed, it is then and only then that the Attorney General, acting in an open court, may intervene to stop the prosecution.

As I have indicated, the use of this power where there is evidence to support a criminal charge is rare. It is only done after the most anxious consideration of all of the facts in a particular case. In abortion offences, as with others, those facts can vary widely and dramatically from case to case. No blanket decision can or will be made, either in relation to illegal abortions as a group, or all illegal abortions performed by or under the auspices of an individual. Should Dr. Morgentaler carry out his plans to establish an abortion clinic in

Ontario, he should understand that I will fulfil my obligations in accordance with the principles outlined in this statement.

Mr. Chairman, if I may turn more specifically to the questions and the clarification offered by Mr. Renwick today, I should simply say that my understanding of the Criminal Code gives me no jurisdiction as Attorney General to supervise the hospital system in relation to this type of clinic or any other type of clinic.

Mr. Breithaupt: Or to require committees to exist.

Hon. Mr. McMurtry: Or to require committees to exist. That does not fall within my jurisdiction as the Attorney General.

Mr. Renwick can say, from that, "Then as a member of the executive council, you, being the Attorney General, may or may not have some responsibility just as a member of government."

I am dealing in these estimates as I must, with respect to my specific role as the Attorney General. I do not think this would be the appropriate place to debate what Mr. Renwick or others might think should be the overall policy of government. I do not say this in a provocative way, because I appreciate the sensitivity Mr. Renwick demonstrated as he approached this very difficult and very controversial issue.

Mr. Renwick: I am not interested in an argument about it either. I am just interested in the kind of catch-22 situation which is involved in it.

I think your statement is a very clear and adequate one. I think that is particularly true of the synoptic way in which you refer to the present law: where abortion is concerned, it is crucial to understand that the federal government, exercising its exclusive criminal law authority, has made it a crime to perform an abortion other than in a licensed hospital, with the consent of a therapeutic abortion committee.

My concern is related entirely to the fact that a citizen in the province wishing to consult about a possible therapeutic abortion has to seek out a licensed hospital that has a therapeutic abortion committee. If my information is correct, this means that there is very substantial inconvenience for any number of reasons, geographic as well as other more sensitive inconveniences, involved with being able to find a licensed hospital that has a therapeutic abortion committee. It raises a lot of very sensitive issues in many parts of the province.

In the standing committee on social devel-

opment, we had before us the report of Professor Maureen Orton with respect to the degree, extent and concern about adolescent pregnancies in the province, relating to a large number of areas of the educational adequacies and many other concerns that were involved in it.

On that basic question, let us assume for the moment that we are all perfectly in agreement, that the code states not only the way the law is, but the way the community wishes the law to be, and so on. My sole concern is that there seems to be a catch-22 situation if in fact there are licensed hospitals that do not choose, for whatever reasons there may be, not to have therapeutic abortion committees.

I understand that you, as the chief law officer of the Crown, are certainly not required to go out and say to each hospital, "You have to provide that committee." However, I do think it is a matter that the cabinet should look to, and not necessarily shy away from: fairness and equity to all women citizens of the province with respect to that accessibility.

You see, it's a real catch-22 situation, I don't deny that. It's a real conundrum, and a very difficult social issue with all sorts of overtones and complications.

4:40 p.m.

However, apart from philosophical views about the question—which I'm not debating or arguing any more with the Attorney General about his personal views on it—Dr. Morgentaler gets the impetus behind what he's after because of the sense among women in Ontario that barriers are created because of lack of accessibility. That's a problem which I think has to be addressed at some point or another. I can't express it any better.

Hon. Mr. McMurtry: If I could just make one brief observation: My reading of the Criminal Code indicates that it would appear to be the will of Parliament to delegate some responsibility to individual communities and hospital boards regarding their establishment of such committees. That, in my reading of the Criminal Code, would appear to have been the intention of Parliament.

However, I appreciate the concerns Mr. Renwick has raised. I don't think there is anything further that I can really add that is relevant at this time, Mr. Chairman.

Mr. R. F. Johnston: Mr. Chairman, just a few questions, if I may, on this matter.

Have there been any discussions to date with

your federal counterparts in terms of the question of criminality—in other words, changing the definition of when an abortion is not acceptable?

Hon. Mr. McMurtry: Not to my knowledge.

Mr. R. F. Johnston: I would like to know if there has been any discussion at all, because this is now moving into the provincial sphere. What Dr. Morgentaler has successfully done is to move one of the hardest issues in terms of political and moral decisions on to the provincial scene for the first time ever.

As political animals, we've had the luxury of being able to watch federal politicians try to deal with this one. Is there any thought to having discussions with your federal counterpart on the question of criminality, or on the question of whether or not there is some conflict between the notion of this being a right under the conditions that are met, that is regarding the health and life of the woman who wishes to have the abortion, and the whole question of accessibility.

Hon. Mr. McMurtry: The federal government has never been loath to remind its provincial counterparts that the Criminal Code is a matter within its exclusive jurisdiction. That being the case, this is simply an issue that will have to be addressed by Parliament, if it is going to be addressed.

Generally speaking, it has always been the federal government that has initiated any discussions with respect to amendments to the Criminal Code. We have no indication from them that they are interested in discussing the issue at all.

As a matter of fact, one of the members of the committee told me earlier that someone representing the federal government was reported in the media as saying that it was not interested in debating the issue.

Mr. R. F. Johnston: "Because it's such a thorny issue we're going to duck it." As the member for Riverdale says, it's a catch-22 situation that is in fact causing us the problem at the provincial level.

Hon. Mr. McMurtry: Any time there is an issue that attracts this amount of controversy, I don't think any of us are unrealistic enough to expect it to just go away.

Mr. R. F. Johnston: Have you been reviewing the Morgentaler cases in Quebec in terms of the decisions where they found him not guilty?

Hon. Mr. McMurtry: No, the decisions that

have been reported, the legal issues, are decisions that I have read in recent years, but the Quebec government has not indicated whether or not a policy exists with respect to prosecutions in these matters. We have inquired because a number of statements have been made attributing certain policy decisions to the Quebec government. We have been unable to ascertain any policy that has been adopted openly by the Quebec government in this area.

Mr. R. F. Johnston: I will not ask you any hypothetical questions about how far you might appeal decisions if they turn out to be the same as the Quebec ones.

One thing the member for Kitchener (Mr. Breithaupt) indicated is it is not mandatory to have committees, obviously, in the various hospitals. Has anybody, to your knowledge, ever sued a hospital for not providing a service through that committee?

Hon. Mr. McMurtry: I have not heard of any such lawsuit.

Mr. R. F. Johnston: Because it is not mandatory, I presume.

Mr. Chairman: Would you carry on, Mr. Johnston, with the other question of the battering?

Mr. R. F. Johnston: I wanted to ask the Attorney General a few questions, if I might, about wife battering and wife assault. I had really hoped that our committee's report would be out by now, but we have decided to make history in a couple of ways. One way is that we are going to produce what I think will be the first committee report in English and French simultaneously. Because of the translating, it is taking us a little longer to get out what has been for some time a finished report. We hope it will be out by next week. I was afraid I would miss the chance to ask you some questions, depending on when your estimates were over and what vote you were at.

If I might, I would like to ask you a few questions that come a bit out of your testimony before the committee in July, which we appreciated, and I will just follow up on a few of those matters to see what you have been doing subsequent to that.

One of the immediate things is the whole notion of the seriousness of the crime of wife assault. You addressed that in terms of agreement with the federal committee and ourselves about the need to try to reinforce the notion that assault within the family is as serious as assault outside the family.

Hon. Mr. McMurtry: Perhaps more serious.

Mr. R. F. Johnston: More serious and, unfortunately, more complicated to deal with, as well, because of the emotional problems and other concerns in terms of responsibility for children.

One of the things that came out of your statement was a letter on laying an information that, as I recall, was then issued through, I presume, the prosecuting attorneys around the province.

Hon. Mr. McMurtry: You go through the director of crown attorneys, Mr. John Takach. Do you have a copy of that?

Mr. R. F. Johnston: I remember it pretty well; in fact, I think I have a quote from it here.

Hon. Mr. McMurtry: I also requested the Ontario Crown Attorneys Association to place this issue, together with child abuse, on the educational program they have every fall. A good deal of time was devoted to this issue at their conference in Toronto this fall. As I recall, it was at the beginning of November.

Mr. R. F. Johnston: Can you tell me what the response was to the idea of pursuing more vigorously the policy that is now under way in the London police force, of the police actually taking the initiative to lay the charge?

4:50 p.m.

Hon. Mr. McMurtry: I have certainly encountered no resistance to our wish that police be encouraged to lay charges where they have reasonable or probable grounds to believe that an offence has been committed. This is something that I discussed personally with the crown attorneys at their fall seminar. I indicated that I had been quite impressed with what I had learned from our crown attorney in London, with whom I have discussed the matter personally.

I stressed the psychological importance, quite apart from every other consideration, of the police officer laying a charge, where the officer has reasonable or probable grounds. It removes quite a psychological burden from the assaulted woman who might be under considerable pressure from her husband, if there is any ongoing relationship, to withdraw the charge on the basis that she laid the charge and she could withdraw it.

As you well know, when a police officer lays the charge, the wife is in a much more advantageous position to say that she did not lay the charge. It was laid by the police, and she is simply a witness. It is then up to the police to

decide whether or not they want to proceed with it. I discussed this with them.

We had a large turnout at the meeting and I sensed that there was absolutely total support for these initiatives. There is no question that crown attorneys still are faced on a day to day basis with women who, where charges have been laid, are very determined to not proceed with the charges, even when police have laid them, because they feel that reconciliation may be irreparably damaged by the court proceedings. These pressures are brought upon the local crown attorneys on a day to day basis.

In some cases, there may be very legitimate reasons to withdraw the charge. The point that there are cases where withdrawal of the charge may be very much in the public interest has been made by social workers over the years. So it is an issue about which it is difficult to be an absolutist.

The key to it, in our view, is that the woman have access to proper counselling when this decision is made, if she is seeking to have it withdrawn.

Mr. R. F. Johnston: We will come back to that in a minute. What I wanted to ask was how this becomes police policy.

In your letter of August 20 you said, "in any jurisdiction where the police policy is to leave the laying of a domestic violence charge to the complainant, that you make every effort to encourage the police to lay the appropriate charges"—and then there is a caveat—"provided, of course, that the requisite reasonable and probable grounds are present." I think everybody would agree with that.

Just for my information, how is it that becomes a police policy, how does that get transferred down and how do we know that police forces are doing that?

Hon. Mr. McMurtry: I also asked the Solicitor General (Mr. G. W. Taylor) to request that the Ontario Police Commission circulate my instructions to police forces across the province.

Knowing, of course, how all police forces have a close working relationship with the local crown attorney's office, that might not have been necessary, given the fact that the crown attorneys were aware of the policy. But just to emphasize the policy, I did request the Solicitor General, as I recall, and the head of the Ontario Police Commission to circulate our directives to the crown attorneys so there would be no misunderstanding.

The Attorney General cannot direct police forces with respect to laying or not laying

charges. In the final analysis, it is at the discretion of the individual police officer whether, first, he or she has reasonable and probable grounds; and, second, whether it is in the public interest to lay the charge. I cannot direct them to lay the charge, but obviously the advice they receive from our crown attorneys is followed in most cases.

Mr. R. F. Johnston: Could we have a report back from you, perhaps in about six months' time or so, as to how many forces have adjusted their policy? Could you, in co-operation with the Solicitor General, give us that kind of a report?

Hon. Mr. McMurtry: I do not know how comprehensive the report would be.

Mr. R. F. Johnston: You can select a major municipality.

Hon. Mr. McMurtry: We can certainly report back on that, yes.

Mr. R. F. Johnston: One of the things that came through, and you will see it in our report when it comes out, is the real failure of producing adequate statistics about domestic assault cases. Thus it is hard to analyse the results of many of these things as well.

I would like us, as legislators, to start looking at these things for a policy perspective, and if we could have that kind of report it would be useful.

One of the other major questions that comes up is which court is appropriate. If we are going to start dealing with this crime as a more serious kind of crime, is it more appropriate to be in the criminal courts or in the family courts?

Ironically, today I was over at the family court on Jarvis Street where they have been experimenting, as you know, for the last number of years, with melding some of the criminal court practices with the family court location for these kinds of cases. Rather than dealing with each case individually in a small court, they have the large court where many complainants are in at the same time, seeing the court in process as they would in a criminal court.

This seems to give a lot of support to the women involved. They have a special prosecutor who is on hand on each of those days. Again, it gives some sort of reassurance that there is some care taken in that area.

The prosecutor, as well, has a policy of very rarely dropping a charge on the insistence of the complainant, even though, in those cases, it is always the complainant who lays the charge. There is a negotiation, as you suggest, if a

woman so decides, just to ensure that there is no coercion involved, which is never easy to determine absolutely, of course.

One thing that became very clear was that they felt the family court could deal with this as a serious crime if it had the kind of resources to enable a special prosecutor to be available on that basis. One thing that came up a lot was the need for some kind of victim advocacy assistance in these cases, or more staff in terms of the prosecutor actually having time to talk to these women before they walk into court.

I would like to have your comments and thoughts at the moment on which court system deals with this best. One argument suggests that a unified court, in terms of other matters to do with: last year's Supreme Court decision, might be an appropriate kind of thing to expand. I presume you wanted to get into a unified family court discussion later on, but I wondered if you have given any thought to a recommendation that these be transferred to the criminal code or whether they be maintained in family court with extra resources.

Hon. Mr. McMurtry: There is no question that the resource issue is an important issue. We really feel that we require more crown attorneys in the system. One area in which they are needed is with respect to the prosecutions in the family and juvenile courts. The system is under great stress and strain because of what I consider to be an inadequacy of resources.

5 p.m.

Attitudes vary from judge to judge, given the human dimensions of the institution. I have heard it said in some areas of the province that the family court judges are much tougher than the criminal court judges with respect to this type of domestic assault. In most areas of the province, assault causing bodily harm is usually brought in the criminal court. Common assault is more likely to be brought in the family court.

There is a bit of mythology surrounding the view that family court judges, by the nature of the institution, are going to take these matters less seriously than a criminal court judge. That is not necessarily so.

Mr. R. F. Johnston: I would suggest they are more likely to take a conciliation approach, even if they are taking the cases seriously, because of the nature of the court and the role of social workers in the court, etc.

I am aware that I am taking time here. There are just three things I would like to ask about.

After the report has come out and you've had

a couple of weeks to look at it, I and the other members of the committee would appreciate it if you would make some kind of a statement on the recommendations we have made to your ministry. We would also like some advice from you, because we did not make a decision on the family court, criminal court matter. I think we would all appreciate getting that before we meet again at the end of January and move into our next stage of the family violence discussions.

Hon. Mr. McMurtry: Speaking for myself, I am looking forward to reading your report. I would be pleased to respond to it.

Mr. R. F. Johnston: I also wanted to ask about sentencing. If we presume that going through the whole process is important in taking this crime seriously, then one of the difficulties we have is the whole question of sentencing.

Fines are totally inappropriate. They are essentially a licence. Prison or incarceration can mean a financial loss to the family and add an extra burden, especially if there has been some reconciliation in between. Weekend sentencing is a possibility.

One of the things that struck the committee was the need for some kind of development of mandatory therapy concerning, at least, the peer group recognition of the crime. That's the one area of therapy that seems to be successful.

It would be difficult to go through the process for this crime, if the judges weren't given something useful to demand of the person if convicted. I would hope that with you and the Minister of Correctional Services (Mr. Leluk), we can come up with some kind of plan that would assist the judges. Otherwise, they are going to find themselves believing that a serious crime has taken place but will be unwilling to add extra pressure to the family through the present options.

Hon. Mr. McMurtry: Those are very valid comments. Given the nature of the society in which we live and given the increased pressures on families today for a whole host of reasons, I think society does need a considerable enhancement of resources to serve those increased needs. I don't think there can be any quarrel about that.

Mr. R. F. Johnston: Before we actually change how we deal with these cases—if we do—we have to have something in place at the other end. Otherwise, it is fruitless.

I would like to ask you whether or not there is any chance of a federal-provincial conference in the next little while; a meeting of the attor-

neys general on the whole issue of family violence. I refer specifically to the things that impact at the federal and provincial level which you can't act upon by yourself and which the federal government would like to do in co-operation, as I understand it, if they choose to act on the federal report.

It has to do with the Supreme Court judgement about exclusive possession and restraining orders—it happened in British Columbia—and the whole notion of the power of a police officer to extricate the man from the home, instead of the woman and five kids, and if there is some kind of a condition upon that person being released, etc.

A whole range of things have been identified that need co-operative work at the federal and provincial levels. We're going to be urging that there be some kind of early meetings. I was wondering if there is anything in the offing where that could become a major item on the agenda. I don't know whether that kind of meeting specifically on this range of issues is possible.

Hon. Mr. McMurtry: It was supposed to be. We had a provincial meeting of attorneys general scheduled for early October. It was cancelled because of the anticipated provincial elections. I was personally very disappointed that the meeting was cancelled, because this was going to be an item.

Normally, we like to follow a provincial meeting with a federal-provincial meeting within two or three months. I spoke to the federal Minister of Justice a week ago about the need for a meeting in January. I hope such a meeting will take place. If that occurs, we will see to it that this is on the agenda.

Mr. R. F. Johnston: That would be appreciated, even if it's for preliminary discussions about getting together later.

Mr. Chairman, I appreciate the committee's indulgence in allowing me to have these few minutes.

Mr. McClellan: I would also like to thank the committee for allowing me to take a few minutes to raise a concern I am, in a sense, carrying over from the estimates of the Ministry of Health. It has to do with the unproclaimed sections 66 and 67 of the Mental Health Act, which were passed by the Legislature in 1978. They would apply the Statutory Powers Procedure Act to a regional review board's hearing with respect to an appeal against a certificate

for involuntary incarceration of a psychiatric patient.

I wanted to raise the issue with the Attorney General since he is one of the fathers of our Constitution. The Canadian Constitution, passed December 19, 1981, reads in section 7, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

Other sections of the Charter of Rights and Freedoms state that the Constitution is the supreme law and is binding. Section 33 indicates that it is binding on the province unless there is an expressed declaration to the contrary.

I would like to ask the Attorney General if he could share his views on the meaning of section 7 of the charter as it would apply to the Mental Health Act. I would like his views on whether or not it is permissible to continue to operate under the existing sections 32 and 33, rather than to proclaim sections 66 and 67.

5:10 p.m.

It is my view that the Charter of Rights and Freedoms requires the government to proclaim section 67. I would like to know whether the Attorney General accepts that view, or whether the Attorney General has a different view, or whether I misunderstand the fundamental implications of the Charter of Rights and Freedoms.

Hon. Mr. McMurtry: This is an issue that has been the subject of a great deal of debate over the years. It's a subject about which it's difficult to be an absolutist.

I would like to make a preliminary observation that the chairman of the review committee is Mr. Justice Edson Haines, who has served in that capacity for some years now. He has done an excellent job of operating within the existing structure to see that the interests of mental patients are protected.

From the comments I have heard over the years of people who represented mental patients, there is a great deal of support and respect for the present process.

I have some degree of sympathy with your point, but at the same time, I have to recognize it's a very complex issue. I will get to the issue of the Charter of Rights and Freedoms in a moment.

The Ministry of Health had this matter under review. Many psychiatrists who have contributed a great deal in this area feel they could not discharge their professional responsibilities if those sections were proclaimed. They feel the

nature of their work is such that it requires this degree of confidentiality.

In weighing the public interest and giving the highest of priorities to the rights of the mental patient who is incarcerated, one has to also appreciate the difficulties faced by the Ministry of Health when there are a number of outstanding professionals in this area who simply believe they cannot operate if those sections were to be proclaimed. The issue is an important one and will continue to be addressed, particularly in the light of the new Charter of Rights.

I think it's a hazardous undertaking at the best of times for the Attorney General to give off the cuff legal opinions. As you know, every section in the charter is subject to section 1, which states, "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

A court would look at section 7, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in the course of the principles of fundamental justice," and, faced with this issue, would have to decide whether or not the failure of the government to proclaim these sections can be demonstrably justified in a free and democratic society.

There are many who will suggest giving the highest priorities to the rights of the mental patient can be demonstrably justified and is very much in their interest as well as that of the public. The public is very concerned, on the other side, in this very delicate process of balancing rights.

The public, of course, wants to be assured of two things, fundamentally: that those who are mental patients being incarcerated in this manner are being treated fairly, and are not being contained in hospitals unnecessarily.

At the same time, as we know, the public wants to be satisfied that where warrants are loosened or, indeed, rescinded, it is being reasonably protected from people who should not be released. We hear a good deal about this.

We have a medical profession which generally adopts the view that it is in everyone's interest to maintain the status quo. So given—

Mr. McClellan: Just to clarify, if I may; I don't want to interrupt, but I'm talking about civil admissions under the Mental Health Act. I'm not talking about criminal proceedings under the Criminal Code, under Lieutenant Governor's warrants.

Hon. Mr. McMurtry: The process is fairly similar.

Mr. McClellan: The process is similar. My question has to do with involuntary incarceration under the civil law, under the Mental Health Act. That's all that I'm raising.

Hon. Mr. McMurtry: I appreciate your clarification, but my comments are equally relevant to that particular section, in so far as involuntary admissions have nothing to do with the criminal process.

As I say, I find it very difficult to be an absolutist on this subject and, indeed, on a great many other subjects. When you are weighing the rights and opinions of the community as a whole, the medical profession and those who are concerned with the treatment of the mentally ill are very strongly of the view that the existing system should be maintained.

Whether or not a court will require a change or not, I'm not really in a position to speculate. I don't think it would be very helpful for me to express an opinion regarding how a court would interpret particular sections of the Charter of Rights in relation to issues such as this.

Obviously, if I were of the view that this was a clear violation of section 7, even in the context of section 1, then you might quite properly say that I, as the senior officer of the crown, have a responsibility to demand that this section be proclaimed.

I have to say that I don't think the issue is a clear one. I have some degree of sympathy, obviously, for the arguments you're putting forth. However, I'm not at all confident that a court would necessarily come to that conclusion, given the complicated dimensions of the problems as they relate to the treatment of the mentally ill.

Mr. McClellan: As the result of discussions that are taking place within that ministry on this issue, has the Ministry of Health approached your ministry for constitutional advice, for a legal opinion?

Hon. Mr. McMurtry: Yes. Our statutory powers review committee is looking at the matter, and the Ministry of Health is well aware of the issue. We have raised it with them.

5:20 p.m.

Mr. McClellan: Have you given an opinion to the Ministry of Health as to whether or not the Charter requires them to proclaim section 67 or not?

Hon. Mr. McMurtry: The Deputy Attorney

General is the chairman of this committee, so perhaps he might address this directly.

Mr. Dick: The nature of the comments that have been made is very relevant. We too are aware of them. The statutory powers and procedures rules committee does review all of these matters from time to time as they come to our attention.

We did meet with the representatives of the Ministry of Health about the possible proclamation of these sections into force. We reviewed the nature of all the circumstances, the laws and the possibilities of conflict, and all rests on that issue.

Mr. McClellan: When was that?

Mr. Dick: This was within the last six months. I just forget the exact date, but it has been since I have been back in the ministry, so it has been in that time frame, in about the middle.

I think they shared our concern as to the way in which the provisions as yet unproclaimed do provide the procedural rules that were anticipated. Their difficulty is accommodating the system to those rules and the types of things they would then introduce. The Ministry of Health is therefore working at trying to form the basis to bring them in.

There are a lot of sensibilities that will be changed as all of those rules fall into place, and that affects the responsibilities of the psychiatrists and the other people involved in it. That has been the subject of resolutions and problems.

Mr. McClellan: I am raising the question of civil committals. There is no criminal act of any kind, there is only a psychiatric opinion that a person, at the time of admission, is potentially harmful, either to himself or herself or to other people. In the absence of violation of any law, the citizen is deprived of liberty.

Again, in the absence of any violation of any law, the citizen is not able to have an appeal against involuntary incarceration, according to any rules of procedural fairness.

It is my understanding that this means there is no right of hearing, as of law. There is also no right to counsel, as of law, and there is no right to obtain any evidence which may be in the citizen's file and which is the basis of the citizen's involuntary incarceration. There is no right of the counsel to obtain access to that file.

So all of the basic rules of natural justice and procedural fairness are denied to the citizen who is involuntarily incarcerated, and who has not committed any crime or broken any law.

It seems to me that the arguments raised

against it are twofold. First, the psychiatrists don't like it, and they did not like it when we rewrote the Mental Health Act and tightened up section 14 around involuntary incarceration. They predicted that all kinds of catastrophe would ensue from that, and it has not ensued.

Second, there is the argument with respect to those who are incarcerated under a Lieutenant Governor's warrant. It seems to me that no one is dealing with the question of civil incarceration. Quite frankly, I don't understand why the issue of civil incarceration gets mixed up with the issue of incarceration under a Lieutenant Governor's warrant.

Hon. Mr. McMurtry: Are you talking about the review committee?

Mr. McClellan: I am talking about the regional review board, which is established and set out at present in sections 32 and 33 of the Mental Health Act, and which this Legislature changed in 1978, those changes being set out in sections 66 and 67 of the Mental Health Act, sections which have not yet been proclaimed.

My understanding is that these sections deal with civil incarceration under section 14 of the Mental Health Act, I believe it is. I do not have it here.

Hon. Mr. McMurtry: They deal with both.

We have expressed our concerns. We have indicated that it is a matter on which the issues you raise are very important. They have to be addressed. I really cannot add anything to what we have said. They have been advised and we are waiting to hear back.

Mr. McClellan: You are waiting to hear back from whom?

Hon. Mr. McMurtry: The Ministry of Health.

Mr. McClellan: Are you saying that the determination of the questions we are talking about will await the judgement of the court?

Hon. Mr. McMurtry : I am saying that the matter is under very intensive review at the present time, and it is not necessarily awaiting a decision of the court.

Mr. McClellan: But it has been very actively discussed?

Hon. Mr. McMurtry: We have advised them that this is an important issue. We have advised them as to the dimensions of the issue and the possible implications of the new Charter of Rights. I am not going to say any more about it at present.

Mr. Renwick: I know it is difficult to keep track of everything that is asked. My colleague,

Mr. McClellan, has been concerned over this particular issue since the 1970s and perhaps some effort could be made to keep him informed about it.

I sat with Mr. McClellan on the committee that dealt with the changes in the Mental Health Act, particularly those sections which are now unproclaimed. We are just anxious to have some of the details resolved.

Hon. Mr. McMurtry: I might have had some additional information on it, and may still have some before the proceedings are over. I have no question whatsoever about the intensity of your interest. I might have had a little more information if I had known that the matter was coming up today.

I am not saying this critically in any way, but if there is any further report that is to be made available before we adjourn or after, I would be happy to do it.

Mr. McClellan: If you could, I would appreciate that very much. I was not raising it for purposes of trying to put you on the spot.

Hon. Mr. McMurtry: No, not at all.

Mr. McClellan: Also, I do understand that a very intensive review of the issue is under way within the Ministry of Health.

Let me conclude with this observation. The Ministry of Health, as the Attorney General may know, is moving into a very important new area which is being described as an advocacy program for patients in provincial psychiatric hospitals. The ministry is in the process of putting its advocacy project together.

I believe very strongly, first, that this is a very important reform, but that, second, the advocacy project has the potential of being compromised in a very fundamental way by virtue of the absence of the proclamation of section 67.

Hon. Mr. McMurtry: Yes. I am not suggesting that we are opposed to the proclamation of section 67. At this stage I do not think we can be more specific than that.

When we are dealing with various ministries, giving them legal advice—and not always advice they want to hear—we are not in a position to discuss publicly the nature of the legal advice until they've had an opportunity of responding. I think this will be forthcoming in the fairly near future. I'll then be able to be a little more specific than I have been today.

5:30 p.m.

Mr. McClellan: Sure.

Hon. Mr. McMurtry: I guess there are certain

parallels to a solicitor-client relationship when we are dealing with other ministries on sensitive legal issues.

Mr. McClellan: Just to finish; if it is possible for you to review this, and if there is other information that you are able to share before the conclusion of these estimates, I would be very happy.

Hon. Mr. McMurtry: If not, I would certainly hope in the near future.

Mr. McKessock: I just want to give the Attorney General notice that I am going to bring up an issue next week, one that I have mentioned to you a couple of times, pertaining to one of my constituents, Ken Reay, who—

Hon. Mr. McMurtry: I am sorry. I have been waiting for a report on that issue. I was just inquiring as to whether that is available today.

Mr. McKessock: Ken Reay is a trucker in my area. You have a letter from Peter Fallis, his lawyer, and they are patiently waiting for a response on this.

They did a search on his trailer at the time he bought it two years ago, and somehow the system has let him down because, under the serial number search, it showed up one lien against it, under International Harvester. He paid that lien off.

Two years later, someone moved in in the middle of the night, about two months ago, at 4 a.m., and removed his trailer, with no authority to do so. He has been unable to obtain the trailer since, or to get any action on it through the Ontario Provincial Police or any other area.

In the meantime he has been paying \$800 a month on the loan he took out two years ago to buy this \$30,000 trailer. He also put \$3,000 worth of new tires on it after he received it. He is in quite a dilemma now, still making payments on a trailer that he doesn't have any more.

This is the time of year when he uses it to go out to the western provinces to bring home cattle. So, he not only has a loss of the trailer, he has a loss in the business he can generate through hauling cattle at this time of the year. In addition, he has a loss of the \$30,000 he paid for the trailer.

I just want to let you know that I will bring this up under the proper vote next week. I hope we can get it straightened out.

Hon. Mr. McMurtry: I think by next week we shall have a report for you as to just what has happened there. I am confident of it.

Mr. McKessock: Thank you.

Mr. Chairman: We are on vote 1403. Mr. Renwick had left me a note that he had some brief comments, and wasn't unduly concerned about those, but that he did not want item 1 carried until tomorrow.

Mr. Breithaupt: Mr. Chairman, might I suggest that, for the convenience of the staff persons as well as for the committee, we could agree today to deal both with votes 1403 and 1405? Then, next Wednesday, we could begin with vote 1404. This would allow people to make their plans.

Vote 1405, as you know, deals with the legislative counsel services. Other than giving the usual congratulations to Arthur Stone and his staff, it does not ordinarily take a particularly long time. If we were able to do that today as well, it would save Mr. Stone from having to spend an additional day, although I am certain he would not rather be anywhere else.

I think we could do votes 1403 and 1405 quite nicely. Those who are here with respect to vote 1404 would know we would be beginning that subject on Wednesday next.

Mr. Chairman: Right. Shall we proceed with vote 1403, the official guardian, the public trustee and the Supreme Court accountant? If we get to the end of that, then Mr. Stone is here. We would go right to vote 1405.

On vote 1403, guardian and trustee services program; item 1, official guardian:

Mr. Breithaupt: I know that Mr. Perry, the official guardian, is with us. He may want to come forward.

Mr. Chairman: Do you have questions to lead off, Mr. Breithaupt?

Mr. Breithaupt: The only one that I would have at this point, in the absence of any general comment that Mr. Perry might choose to make, is that I noticed a report of a recent case with respect to what are cited to be repeated objections by the official guardian on that case. I don't know whether the official guardian is able to comment on that case, or whether the matter is going to be further appealed. There is an instance in which problems of risk with respect to a certain local situation for a child were cited.

Rather than talk about that particular case, I was wondering if the official guardian could report to us on those kinds of cases and the pattern of handling them.

I suppose that, particularly outside of Metropolitan Toronto, the official guardian would continue to use local agents to represent him. I'm just wondering what the pattern of opera-

tions is with respect to those local agents and how the official guardian routinely deals with cases like this.

I don't particularly wish to go into one case, I don't think that would be appropriate, but I'm just wondering if you have a certain pattern.

Hon. Mr. McMurtry: There may be certain matters about that one case, because of the amount of attention it has been given, to which the official guardian might like to respond.

Mr. Breithaupt: If he thinks it's appropriate.

Mr. Perry: There are certain aspects of that case which I can comment on without prejudicing any of the parties. I do so because of the wide publicity given to that case, and my concern that the position of the official guardian with respect to that matter is misunderstood and has been substantially misrepresented in the press.

This is a very serious child abuse case. Interestingly enough, there have been something like 19 court appearances before more than 20 judges dealing with the various aspects of the matter. The matter has been dealt with by a very eminent county court judge on appeal, who gave a 19-page judgement. It subsequently went to the Court of Appeal where, of course, three judges heard the matter.

One of the concerns I have with that case is that the press has intimated that the official guardian has some manipulative responsibility with respect to the matter, which he doesn't have. The determination of the issue, whether or not the child should be returned to a parent in this or any other case, is the sole responsibility of the court. The official guardian's role is simply to provide independent representation to the court on behalf of the child. That was done in this case.

I am particularly concerned about the Globe and Mail's story yesterday, which indicated that the official guardian had stalled the return of the child to the parents. Of course, this is totally untrue. The official guardian has not stalled any aspect of these proceedings.

Regardless of the official guardian's position in the matter, a judge must make a final determination at the proper time with respect to this matter.

It causes me concern that very sensitive issues of this nature are dealt with in the manner that this case and others have been dealt with by the press. The issue of child abuse is one of great concern to the community and to professions dealing with children. Certainly their rights

must continue to be independently protected in proceedings before the courts.

This is the avowed responsibility of my office which we shall continue, regardless of any position taken by any reporter, or indeed any agency in the community.

5:40 p.m.

Mr. Breithaupt: I'm pleased that you've had the opportunity to put those views on the record, Mr. Perry. It's a most important statement of principle and I think this is clearly the place to make it. I have no other particular questions.

It appears to me that the operations of the official guardian's office, as Mr. Perry has set out, are becoming probably more difficult in a society that is undergoing societal and family arrangement changes as well as economic difficulties. The total impact upon his office with respect to the matters of children's rights and their treatment in our society is one which I am sure is becoming a more particular burden.

When you look at the increase in the statistics between 1980-81 and 1981-82, it sets an unfortunate trend which I have no doubt will continue into this year. I'm sure that the manner in which these matters have been dealt with, both in the concerns of assisting in the presentation of the rights of children to the court and also in the general counselling work that occurs, has been quite a challenge to you and to your staff over this past year.

I have no other questions with respect to this vote, Mr. Chairman, and in the absence of any comments from anyone else, I'm certainly quite prepared to have item 1 carry.

Mr. McKessock: I just want to talk to you a wee bit about the official guardian. I didn't realize we were going to be into this vote, so I haven't anything specific.

Over the years, I've had people come to me with great concern about the actions of the official guardian. It may be that they don't take the proper steps to avoid some pitfalls, but it seems there are pitfalls that you can fall into with the official guardian. I'll just mention one that comes to my mind.

You may recall the case. It concerned a constituent in Palmerston. His wife was admitted to an Ontario hospital and the house was taken over by the official guardian.

Mr. Breithaupt: The public trustee.

Mr. McKessock: The public trustee? It's under the same vote.

Mr. Breithaupt: That will come next.

Mr. McKessock: You don't look after this?

Mr. Perry: That is the responsibility of my associate, the public trustee.

Mr. Breithaupt: You are glad to say.

Mr. McKessock: Are they here, too?

Mr. Breithaupt: Yes, they'll be coming up next.

Mr. McKessock: May I carry on with this?

Mr. Breithaupt: Once they arrive, I'm sure.

Mr. McKessock: Do they want to come forward?

Mr. Breithaupt: I think we could carry this item and then move on to the public trustee, which is next.

Item 1 agreed to.

Hon. Mr. McMurtry: Thank you, Mr. Official Guardian.

Mr. Brandt: Moving right along.

On item 2, public trustee:

Mr. Chairman: Mr. Public Trustee, please come forward to one of the microphones.

Hon. Mr. McMurtry: Welcome, Mr. Public Trustee.

Mr. McKessock: I'm sorry that I got the public trustee and the official guardian mixed up.

Mr. McComiskey: Many people do.

Hon. Mr. McMurtry: They're both extremely highly qualified and distinguished members of the community, so it's understandable.

Mr. McKessock: Did you hear what I said so far?

Mr. McComiskey: I heard you raising the problem about the sale of a house, but I didn't have the details.

Mr. McKessock: It was taken over by the public trustee. The house was in his wife's name, and was now in the hands of the public trustee.

The house was in her name because, when they were married, 25 or 30 years ago, the wife's father gave them the money to buy the house. The father kept the mortgage on the house and he, understandably, put it in his daughter's name.

The husband had a business and, over the years, they paid off the mortgage. It has been long paid off, but they never transferred it. It was left in the wife's name.

Now she is under the care of the public

trustee—and when I talk about falling into the hands of the public trustee or into the pitfalls, I wonder why she was ever taken over by the public trustee. Her husband was there. Why could he not administer her affairs? They had a family. Why could they not look after them? Yet they end up in a position where the public trustee owns the home. The husband had paid for it over 25 years. The fact is that it was still in her name, and he was having a problem.

I guess I have two questions. How do they remedy that to get it back into the husband's name after it has been taken over by the public trustee? Second, why did it have to go to the public trustee in the first place? Why could not one of the family have looked after her affairs?

Mr. McComiskey: I will answer your second question first. Under the Mental Health Act, if the wife is taken into a psychiatric facility and found by the attending physician to be incapable of managing her own affairs, the statute requires the public trustee to become committee, it is called, of the estate.

The family, if it objected to that, has every right to apply to a judge of the county court under the Mental Incompetency Act, to become committee in my place instead. Unless there is anything known that would be reason to object to that, we never oppose the application. The main issue that comes into that is a question of legal costs.

The family who wishes to apply under the Mental Incompetency Act has to engage a lawyer of its choosing. It is a two-stage court proceeding. First, there is an application to the county court judge and that has to be confirmed by a Supreme Court judge. The legal costs these days can become fairly heavy. Often, that fact discourages the family from applying, but they have every right to apply if they wish. We would not oppose it under normal circumstances.

When you say the public trustee owns the house, that really is not quite accurate. We take over the management of the house on behalf of the wife, because it is an asset in her name. That does not mean we put the husband out of it. We manage that house, we hope, as she herself would have done.

It might turn out that the family wanted to stay on in the house and we make arrangements for that, provided there is money available to pay the carrying charges of taxes, fire insurance and mortgage payments. We might very well have the family staying in there.

If the husband did not want to be in the house or if the funds to maintain it were not there, then

the property would have to be sold for purely practical reasons.

Mr. McKessock: What would you do, rent his own house back to him or something like that if he wanted to stay there?

Mr. McComiskey: No, in a proper case we would just let him stay there, but we would require some arrangement with him that he would continue to pay the carrying charges. We would not put him out.

Mr. McKessock: Okay, the mortgage has been paid off for 25 years and under our new Family Law Reform Act the house must certainly be half his. Would not that be right?

Mr. McComiskey: That is probably so, yes.

Mr. McKessock: When it was sold, half the money would be turned over to him. Is that what you are saying?

Mr. McComiskey: It is likely, yes.

Mr. McKessock: Then if he wanted to stay there, it seems to me there is no way of getting out of the fact that half the money for the house is going to go to the wife.

5:50 p.m.

Mr. McComiskey: It probably would under the Family Law Reform Act, no matter who owned the house. Whether he owned it, or she owned it, or at least had title to it.

Mr. McKessock: So this will go towards her stay in the hospital?

Mr. McComiskey: It would go towards her maintenance, yes.

Mr. McKessock: What would have happened if the house had been in the husband's name?

Mr. McComiskey: He would be unable to sell it without consent from her, and likely the same result would come about. She would get half of the house.

Mr. McKessock: But if he had never sold it before she died—

Mr. McComiskey: If he had never sold it, he would be living in it, paying the expenses on it, because it is his property, which is exactly what he would be doing—

Mr. McKessock: Not quite. You see, he is going to end up with the house, if it is in his name, and when it is in her name, he is going to lose half of it.

Mr. McComiskey: If he sold it, he would lose half of it too.

Mr. McKessock: Yes. But I am saying that he does not want to sell it. He is living in it and, if I

get what you say, if it is in his name he will always own the whole amount of the house. But if it is in her name, what happens when she dies?

Mr. McComiskey: It would depend, first of all, on whether she had a will and what was in the will. I cannot really answer that question.

Hon. Mr. McMurtry: If she died and left it to one of the children, it would go to one of the children, subject to the right of the husband to apply, perhaps, under dependant's relief.

Mr. McKessock: Did you say if she has a will?

Hon. Mr. McMurtry: Yes.

Mr. McKessock: What if she has not got a will?

Hon. Mr. McMurtry: It would go according to the Devolution of Estates Act.

Mr. McKessock: These are some of the pitfalls I am talking about. It seems to me that there is a great advantage for that house to have been in the husband's name.

Mr. McComiskey: I do not really think so, sir. There would have been no great advantage in having that house in his name rather than hers.

Mr. McKessock: He would not have had any hassle.

Mr. McComiskey: He should not have any hassle now.

Mr. McKessock: Well, he is, because as you say, you either have to let him stay there—you are directing his affairs in his own house now, right?

Mr. McComiskey: No. We really would not be doing that. If the house was the family home and he wanted to stay there, and said that he wanted to stay there, we in all probability would say: "Fine, as long as you are able to pay the taxes; and pay the upkeep of the house, fine. We will let you stay there." We would not disturb that.

Mr. McKessock: Then of course, it boils down to the point as to what happens if the wife dies.

Mr. McComiskey: It may be that he gets the house anyway under the will; so, in any event, that may be no problem. But, even if she died without a will he would get the bulk of her estate and probably that is enough to take the house and everything.

Mr. Chairman: Mr. McKessock, point out to your next constituent who asks you—while he or she is mentally competent—the new Powers of Attorney Act which would have solved their problems if they had that.

Mr. McComiskey: Actually, it would not have in this case, Mr. Chairman, because the Powers of Attorney Act becomes invalid if she is certified under the Mental Health Act. So the Powers of Attorney Act would not solve his problem.

Mr. McKessock: It overrides, does it? It overrides even under the new Powers of Attorney Act?

Mr. McComiskey: Yes, it does.

Mr. McKessock: I see. I am glad you brought that up, because I was wondering if there is any way around it. What you are saying is she could have had a power of attorney, but you are saying it would not have done any good.

Mr. McComiskey: It would have been perfectly valid if she made a power of attorney and then subsequently became incompetent. That power of attorney would be valid as long as she was in the community, a home of the aged or in a nursing home. But, under the amended Powers of Attorney Act, the power of attorney becomes invalid if she is declared incompetent by the court, or if the public trustee becomes committee, which he would do if she went into a psychiatric facility and was certified.

Mr. McKessock: So if a person goes into a psychiatric facility, it does not matter whether he or she has a power of attorney?

Mr. McComiskey: Not under the present legislation.

Mr. McKessock: It is invalid?

Mr. Chairman: So that is back to the old so found, and the not so found. In essence, the old rule of thumb.

Mr. McComiskey: That is part of it.

Mr. McKessock: It seems to me that if she had a power of attorney prior to going into the hospital, the home should have been transferred into the husband's name.

Mr. Breithaupt: That may well have been.

Mr. McComiskey: I do not think it would have changed the practical aspects of it. I think your constituent probably does not understand his rights. If he wants to write to our office, we will gladly try to explain them to him.

Mr. McKessock: This has gone through, and I am not sure at what stage it is right now. Thank you, Mr. Chairman.

Mr. Chairman: Are there any other questions on the public trustee, item 2?

Mr. Breithaupt: I have a question only with

respect to interest rates under the Supreme Court accountant role, but this item can carry.

Item 2 agreed to.

On item 3, Supreme Court accountant:

Mr. Breithaupt: In looking at the briefing notes, I was interested to see that interest rates with respect to payments on funds in the hands of the Supreme Court accountant have improved substantially over these last several years. The interest rate on infants' funds, as is set out here, was raised—

Mr. Piché: It has gone up from three to four per cent now?

Mr. Breithaupt: No, it has gone up from 10 to 12 per cent, which is commendable. Of course, it is pointed out that for the quarter ending March 31 of this year it was 14 per cent on funds that are invested separately.

Certainly, this has been a comment over the years as interest rates become substantially different in pattern from what they used to be 10 or 15 years ago. At one time, an interest rate of three or four per cent was, for a long-term investment, probably balanced and reasonable. Now, of course, with the fluctuations we have gone through, it is important to ensure that these rates are kept reasonably current.

What have the rates been for the quarters that have gone on since March 31, the second and third ones in the year?

Mr. Carter: Mr. Chairman, we have the accountant of the Supreme Court of Ontario here. From my recollection, interest rates rose as high as 15.5 per cent, but Mr. McGann could probably clarify that. We are now down to 12, as I understand.

Mr. Breithaupt: But the intention is to continue a quarterly review of funds because interest rate changes have been somewhat more volatile and, no doubt, will continue to be so.

Mr. Carter: We have, in effect, matched the new children with the going marketplace. As I understand it, the marketplace is dropping as of a few days ago, but levelled off slightly below 12 per cent. Is that right, Mr. McGann?

Mr. McGann: If you are talking about 30-day deposit notes, it is 11 per cent right now. Those are the wholesale rates. Retail rates would be somewhat lower.

Mr. Piché: How do you base your interest? Do you go by the prime rate, one or two per cent above or below? How do you arrive at that?

Mr. McGann: Based on our revenue of our total portfolio.

Mr. Piché: Will you explain that? I do not understand it.

Mr. McGann: We have a mixture of short-term investments and long-term investments. The long-term investment revenue is fairly static. The short-term investments fluctuate tremendously. For instance, I had \$20 million in short-term investments out six months ago at approximately 15, 16 or 17 per cent. Currently, I have the same investments out at between 11 and 13 per cent. The difference in that would be exactly \$500,000, which would result in a half to one per cent decline in the rates.

Mr. Piché: When you make an investment, are you talking about a short-term loan to the banks?

Mr. McGann: We are depositing in term deposits, bankers' acceptances, bankers' deposit notes and stuff like that.

Mr. Piché: As an example, if you were to receive, say, 12 per cent, just to use any figure, on what do you base your interest? Is it that 12 per cent or a little lower, for whatever handling charges?

Mr. McGann: We are talking about a mix of percentages. The yields on the long-term bonds which I have had for many years would run anywhere from eight and nine per cent to 13 per cent. It's a mix of all the revenue. The revenue is pooled and the expenses, which are the interest rates we pay on our accounts, are based on that revenue.

6 p.m.

Mr. Chairman: Thank you. Are there any other questions of the Supreme Court accountant?

Item 3 agreed to.

Vote 1403 agreed to.

Mr. Chairman: It's six o'clock.

Mr. Breithaupt: We can place vote 1405 in two minutes, if we wish to do that, Mr. Chairman.

Mr. Chairman: Yes, fine. Mr. Stone, would you come forward? Thank you.

On vote 1405, legislative counsel services program; item 1, legislative counsel services:

Mr. Breithaupt: While Mr. Stone is coming forward, may I once again congratulate our legislative counsel on the volume of work his office accomplishes on behalf of the Legislature and particularly his involvement in the drafting and preparation of private members' bills.

I note on page 64 of the briefing notes that in this year's summary the total of one private member's bill passed remains. It was a pleasure

to have my bill passed at that point. I would just hope that this total of nil we see in 1981-82 will not form a recurring pattern. Having one private bill passed in the last 40 years or so is an interesting aspect, where government time was made available in legislation. However, that was for a particular reason. Let's hope we get a few more private members' bills passed.

I have only two things. Mr. Renwick, who had another obligation, asked me to share with you his congratulations for the operation of the office and for the work your staff does. The one question we both had was with respect to an update on translation of the statutes into the French language. We note the number went from 23 in 1980-81 to 43 in 1981-82. I presume that is a cumulative number, or it might be a total increase.

Perhaps we could have a brief report on that aspect. It is one we all look forward to seeing developed so the main statutes in daily use are available as the occasion demands, with the hope that other statutes will take their turn in becoming translated and available.

Mr. Stone: Mr. Chairman, Mr. Arnott is handing out an up to date list of our publication of statutes and regulations. There are 107 acts of varying lengths. The Education Act, the Highway Traffic Act and some of the large ones are done as well. Many of them include regulations. Some of them are quite lengthy, like the Occu-

pational Health and Safety Act; it has what amounts to another four or so large acts in regulations alone.

In addition, we're called upon to translate a lot of forms for ministries in advance of doing the acts. They want to have bilingual forms, so there's quite a bit of production in that as well. The very translation process involves quite a bit of effort in studying and developing terminology appropriate for the common law in Ontario.

The office participated in producing a lexicon this year that is really the first of its kind as an Ontario product.

Those are the activities and the production over the year.

Mr. Chairman: Thank you. There being no further questions, might I also thank Mr. Stone for his assistance in the various committees, for keeping us straight on the meanings of "may," "shall" and the conditional "may."

There being no further questions, shall vote 1405, item 1, carry?

Item 1 agreed to.

Vote 1405 agreed to.

Mr. Chairman: We shall continue next Wednesday morning at 10 o'clock with vote 1404, item 1.

The committee adjourned at 6:05 p.m.

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Dick, A. R., Deputy Attorney General

Ewart, J. D., Director, Policy Development Division

McComiskey, A. J., Public Trustee

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No. J-16

Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament
Wednesday, December 15, 1982

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 15, 1982

The committee met at 10:15 a.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

On vote 1404, crown legal services program; item 1, criminal law division:

Mr. Chairman: Mr. Renwick, do you see a quorum?

Mr. Renwick: As long as Jack Johnson is here, we can go ahead.

Mr. Chairman: Thank you. Shall we proceed with the estimates of the Attorney General? We have four hours and 45 minutes left. When we broke on Friday last we were commencing with vote 1404, item 1, criminal law division. Mr. Riddell has some questions to start.

Mr. Riddell: Thank you, Mr. Chairman. I have a matter I would like to bring to the attention of the Attorney General. I discussed it previously with my colleague Mr. Breithaupt, and he felt that it would be appropriate to bring this matter before the committee on this particular vote. I am hoping I am speaking to the vote and, if not, I would hope you would allow me a little latitude as I really think it is a serious matter and one on which we have to get some answers.

On April 14 this year two harbour police, three holdup squad personnel and three homicide squad personnel boarded a boat by the name of Judith M. Pierson and arrested one of my constituents by the name of Ralph E. Morris for first-degree murder, only to establish later that he was not the guilty person. I want to give you some idea as to how he was used. I think the best way to do it is to read a letter he wrote to the Office of the Public Complaints Commissioner. I was not aware there was such an office, but when he went to speak to Mr. Donnelly, a lawyer of some renown—I think the Attorney General knows Mr. Donnelly. He has a law office in Goderich and he is one who happens to share the same political stripes as the minister.

Hon. Mr. McMurtry: A very wise man.

Mr. Riddell: He is, and he has not done me any harm either. As a matter of fact, when I was

in to see his partner, Dan Murphy, who happens to be a supporter of mine, Jim Donnelly came in and he said: "Damn it all, Riddell, you are in the same boat as your predecessor, Charlie MacNaughton. As long as you are running in the riding, I am afraid we are not going to return it to the Tory fold." That came from Jim Donnelly. I have a lot of respect for his foresight and insight into some of these things.

Mr. Donnelly referred him to a lawyer in London, I believe it was. I do not know this lawyer—again the Attorney General may know him—Patrick Duffy. Pat Duffy said to Mr. Morris—

Hon. Mr. McMurtry: Pat is in London now? He used to be with the federal Department of Justice in Toronto. I was wondering what had happened to Pat.

Mr. Riddell: I think maybe he is a lawyer in London. Pat said, "There is no sense in paying me legal fees when this is a matter you should be taking to the Office of the Public Complaints Commissioner." So that is exactly what he did and I would just like to read the letter he wrote to the commission.

Hon. Mr. McMurtry: Did he get a reply from the commission or are they looking into it at the present time?

Mr. Riddell: Yes, he did. He got a reply from the commissioner, and that is something that I want to refer to. He said to me that he fails to understand why that commission is allowed to operate, based on the type of response he got. It is obvious that they supported the police every inch of the way and never really gave him any consideration. As a matter of fact, he was told by somebody sitting on the commission, I trust, that if he wished to pursue an investigation, he would end up being charged with public mischief.

Hon. Mr. McMurtry: Just so we can get this straight, I would like to be able to get some information for you. This is Mr. Linden's commission, not the board of commissioners of police?

Mr. Riddell: The letter is from Steve Lechnowsky, Office of the Public Complaints Commissioner.

Hon. Mr. McMurtry: Yes.

10:20 a.m.

Mr. Riddell: You will get some understanding as to why I am a little disturbed about this whole matter. Just let me read from the letter Mr. Morris wrote to the commission.

"On April 14, 1982, at approximately 12:45 p.m. estimated time, I came as close to death as I have ever been. At that time I was helping our company out by being chief engineer on our company ship, the SS Judith M. Pierson, tied up in Toronto near Cherry and Commissioners Streets. Another chief engineer had come aboard so I could go to fit out"—this is a seaman's term for to get going—"the ship I am on now. I was to go home to Goderich for the night and return to this ship in Hamilton the following morning.

"At this time, 12:45 p.m. estimated approximately, I was walking down the deck of the ship when I noticed some men coming up the ladder. I did not know them but I was met by one of them who said he was looking for Captain Hooper. I said that he was up forward (the other end of the ship). He then asked if the engineer was around. I said that I was the engineer. He then said, as close as I can remember, that he would like to talk to me. He then got behind me, put his left hand on my left shoulder and drove his right hand into my right trousers pocket where my wallet was.

"By this time I got the feeling that something was wrong, but I had no idea what it could be. By this time we were at the corner of the after cabin and were met by two more, at least, and I saw a gun. From nowhere came a pair of handcuffs and one end was jammed on to my left wrist and tightened severely. Then my right arm was grabbed and twisted one way, then the other way several times, then rammed up behind my back for good measure, then the cuff jammed on my right wrist and tightened just as tight, both hands behind my back. This happened, I suppose, in a matter of a few seconds.

"Meanwhile I'm asking, 'What's going on?' The first man I met said, 'You are in serious trouble, Mr. Morris.' I said, 'What kind of trouble?' He said, 'You are charged with first-degree murder.' From that point on, I remember very little. I do remember the chief engineer that was taking over coming up the deck, beside the after cabin, and me calling to him for help. He was told to get away, as I was dangerous. They then pushed me into the chief's office and told me to sit. I said I could not sit"—because of the way he was tied up and handcuffed and all the rest of it—"so I leaned with my behind on the deck.

"My wallet was then taken from my pocket and dumped out on the desk. One man each had, first, my driver's licence, second, my birth certificate, third, my seaman's card, fourth, my union card from the old Seafarers International Union of Canada from 1960. Each one of them was hollering at me, while another guy beside me with a raincoat like Columbo and a haircut and glasses like Kojac kept hitting my ribs on my left side with his elbow.

"Then two of them grabbed my right leg and lifted it higher than my head and pulled my pant leg up and twisted and examined my leg. Then they did the same to my left leg. I was pleading with them to slacken the handcuffs or to please take them off. One man said, 'Cuff him in front,' and another said that I could not get down the ladder cuffed, so they took them off and told me they were taking me downtown. They would not trust me to get my jacket and cap from my locker. Two went down the ladder ahead of me and two behind me and put me in the back seat of an unmarked car, one man on each side of me.

"Up town we went, where I was fingerprinted, and about a minute later they said: 'Gee, you are not the guy we want. We will take you back now. These things happen.'

"My right arm has been hurting since the twisting when I was cuffed, and I told four of the men that they had hurt my arm and hurt it damn bad and that I did not think there was any need of it. They then returned me to the ship and one guy, the only one that would give me his name, Sergeant Dave Boothly, said to give him a call when I was in Toronto and we would 'have a beer'."

"Well, it seems that a fellow by the name of Ralph Whitfield Morris had killed a woman in Port Colborne the day before. The police called our company head office and asked if Ralph Morris worked for them. When our office said I did, no more questions were asked. My description was not asked for, my second name, my address, or my work record. Our office was told that I was in the most serious kind of trouble I could be in and they were taking me off the ship. When they were aboard the ship, not one of the crew's word was any good that I had not left the ship the day before. I was a guilty man.

"I have lost a lot of sleep just thinking about all those men with guns and no more intelligence than they proved they have. I am positive that if I had as much as reached for my handkerchief to blow my nose, I would have

been shot. I am fully convinced of this. I know I would have been.

"Since that time, my arm has ached almost constantly and I have only about half the strength in it I should have or used to have.

"On Saturday evening, April 17, 1982, I went to the emergency department of Hamilton General Hospital on Barton and Victoria Streets in Hamilton and a Dr. Small took four X-rays of my right elbow and said that it should be in a cast for approximately four weeks. He also gave me a prescription for Tylenol with codeine No. 2 for the pain.

"I then called Pat King, chief of police in Goderich, and he told me to inform both the Niagara Regional Police Department, homicide division, and Metropolitan Toronto Police Department, homicide division, that I was laying a complaint against them. This I did on Sunday, April 18, 1982. I then contacted by phone Mr. James Donnelly of Donnelly and Murphy in Goderich. Mr. Donnelly put me on to Mr. Patrick Duffy, 85 Richmond Street West, Toronto." I am sorry, Mr. Minister, it is Toronto.

"Mr. Duffy put me on to you people"—by "you people" he is talking about the Office of the Public Complaints Commissioner, to whom he is writing this letter—"and I talked to you on the phone on April 30, 1982. I don't know when I can see you in person. I know I cannot put up with my right arm the way it is much longer.

"The ship I am on now has been laid up for several years, and I have been told it will be my steady job, so I don't want anyone else to have the duty job of getting it going good so I can take over.

"Dr. Small told me that if the arm got no better to have it X-rayed again in approximately 10 days from the time I saw him. It got no better, but I did not have a chance to be X-rayed again.

"Please look into this case. I must have my arm fixed, but I don't think I should lose any wages while I do. I also do not think our company should have to pay me while I am not working for them.

"Please keep Mr. Duffy informed as to your investigation. I don't think I can see you in Toronto, as I don't think I will ever feel safe there again."

"Thank you very much and hoping to meet you soon,

"Yours truly, Ralph E. Morris."

He wrote to the Office of the Public Complaints Commissioner. He got a letter back and—

Hon. Mr. McMurtry: Have you a copy of the letter?

Mr. Riddell: I have a whole file on this case. I believe he did tell me he did get a response from the Metropolitan Toronto police.

Hon. Mr. McMurtry: That is rather critical to our discussion, is it not?

Mr. Riddell: Pardon?

Hon. Mr. McMurtry: That is rather critical to our discussion, the response.

Mr. Riddell: Yes. I thought he had left it with me. Here it is. It is a letter from Steve Lechnowsky, investigator of the Office of the Public Complaints Commissioner.

"Pursuant to our telephone conversation of August 30, 1982, as you indicated that you have not yet received the chief's decision, I am enclosing herewith a photocopy of the letter dated August 19, 1982. Should you have any queries, please do not hesitate to contact the writer."

The letter written to Mr. Ralph Morris from a Mr. J. Ward, acting deputy chief of police, complaint review officer, says:

"Dear Sir:

"Your allegations against certain members of this force have been investigated by the Public Complaints Investigation Bureau.

"In my capacity as complaint review officer, I have studied all aspects of your complaint and the ensuing police investigation. Following are my comments and findings:

"Allegation number 1: You allege an officer stepped behind you and grabbed your wallet. He did not identify himself.

"Comments: The first officer to approach you was a member of the Toronto port police and as such does not come under the jurisdiction of this force. He was interviewed, however, and denies the allegation. He states he took you by the shoulder and directed you to the railing. A second port police officer states that later, in your cabin, he asked you for identification. You indicated that it was in your back pocket. He assisted you to your feet and a Metro police officer removed your wallet at that time.

"There is no independent evidence to either prove or disprove this allegation." So it is the police word against Morris in this case.

10:30 a.m.

"Allegation No. 2: You allege the handcuffs were jammed on and tightened severely and your right arm was twisted several ways and forced up your back resulting in a severe injury

to your right elbow causing you to lose days at work."

"Comments re allegation No. 2: The officer who handcuffed you denies this allegation. He states there was no difficulty in handcuffing you and he was not required to use force. The other officers present were interviewed and also deny that force was used.

"A doctor at Hamilton General Hospital was interviewed and states at no time did he suggest to you that your right elbow should be in a cast for four weeks. Upon examining your elbow, he could find no physical injury other than your own complaint of pain. Your doctor reports he examined you six weeks after the incident and found no physical injury other than your complaint of pain.

"Although he states he diagnosed muscle strain consistent with your arm being twisted several ways and forced up your back, he gives no basis, nor does there appear to be any basis for this diagnosis. He reports no physical injury was found that would also be consistent with the injury reported to the Workmen's Compensation Board of Ontario May 17, 1982. The investigation has produced no independent witness to prove or disprove your allegation and the medical evidence does not support you."

"Allegation No. 3: You allege in your letter that officers were pointing guns at you and you felt that you could have been shot."

"Comments: The officers state that three of the officers from the holdup squad were armed with shotguns. They deny your allegation and state at no time was any gun pointed at you, and immediately after your arrest the guns were returned to the trunk of the police car. This is confirmed by an independent witness at the scene."

Allegation No. 4: "You allege that while in your cabin, the officers were yelling at you and one officer kept hitting you in the ribs with his elbow."

Comments: "The officers deny yelling at you and the officer you claim hit you is a member of the Toronto port police and, again, does not come under the jurisdiction of this force. However, the officer was interviewed and denies the allegation. He states his only physical contact was to check your handcuffs. There is no independent evidence to either prove or disprove this allegation."

Allegation No. 5: "You allege your leg was grabbed and twisted. The officers state while checking your description against the wanted man's description, they asked you if you had any

tatoos or scars on your legs. You lifted your leg up stating, "No, look," and the officer pulled your pant leg back to examine it. There is no independent evidence to either prove or disprove this allegation."

Allegation No. 6: "You allege the officers took you downtown and, on fingerprinting you, found they had the wrong man."

Comments: "The officers state that upon investigating you in the cabin they felt you might not be the wanted man. They advised you of this possibility, but due to the seriousness of the offence, they wished to check your fingerprints to be absolutely sure. You agreed to this and went on to your own accord, and this is confirmed by your own witness."

Allegation No. 7: "You allege that an officer called your work and indicated you were wanted by police for a serious matter and were being taken off the ship."

Comments: "The officer in question is a member of the Toronto port police. He denies the allegation and states he only requested information as to whether you were employed on the ship. When asked if something was wrong, he told the person it was a serious matter being investigated. This is also supported by the witness."

Finding: "Having reviewed the entire matter, I am satisfied that no action is warranted against any police officer. If you are not satisfied with my findings, you have the right to request a further review of your complaint by contacting Mr. S. Linden, the public complaints commissioner. His office is located at 157 Bloor Street West, Toronto, Ontario." It was signed by John Ward.

Apparently he pursued the matter with Mr. Linden and this is the information he gave me. He was told that if he was going to continue to push for an investigation or a reinvestigation, that he could end up being charged with public mischief.

I have here reports dated June 17, 1982, and June 13, 1982.

Hon. Mr. McMurtry: May I interject? I have a letter Mr. Breithaupt just showed me, dated August 19, 1982, from which you have been reading. The concluding paragraph is, "If you are not satisfied with my finding, you have the right to request a further review of your complaint by contacting Mr. Linden, the public complaints commissioner, whose office is located," etc.

Perhaps you have already mentioned this and I missed it. Did Mr. Morris take his complaint

after August 19 to the public complaints commissioner?

Mr. Riddell: He did because this is—I thought I had read this someplace too—

Hon. Mr. McMurtry: Perhaps that would improve upon our discussion because, as you know, the Solicitor General (Mr. G. W. Taylor) normally deals with police matters. But this would come under our jurisdiction, since the public complaints project is under the Ministry of the Attorney General. You're quite right in bringing it here. I am rather anxious to know what the final result was so far as the public complaints commissioner is concerned.

Mr. Riddell: What was the date of that letter?

Hon. Mr. McMurtry: August 19.

Mr. Riddell: Here is another letter dated August 8, which may shed some more light on it. It was a letter written to Mr. Patrick Duffy by Mr. Ralph Morris and it may well contain in this letter—

Hon. Mr. McMurtry: Again, I'm not trying to shorten this necessarily. I think what is important for our discussions is to find out how the public complaints commissioner dealt with this matter. You may not have that letter with you, if you don't have anything following August 19. Maybe we could check with the public commissioner and see what they have on their file.

I'm only making this as a suggestion. If you want to read that letter into the record, fine.

Mr. Riddell: I trust this is all kept confidential. Matters that are brought up in committee can in no way—

Hon. Mr. McMurtry: It's all in Hansard, I assume.

Mr. Riddell: Right. I guess I didn't mean it that way. But they couldn't come upon Mr. Morris for some of these things. He comes on very strong in this letter to Mr. Duffy about some of the comments that were made by the police and he uses very strong language.

Hon. Mr. McMurtry: We've all heard strong language from time to time. I don't think anybody around here is going to be shocked, even our friends at the press table.

Mr. Riddell: Let me read this letter then. It was written on August 8 to Mr. Patrick Duffy.

"On advice from your friend, Mr. Jim Donnelly of Goderich, I contacted you in April 1982 about my being arrested in Toronto on a charge of first degree murder aboard the Soo River Company ship, the SS Judith M. Pierson.

"It was not a case of mistaken identity. It was

a case of plain stupidity on the part of the police. You advised me to contact the Office of the Public Complaints Commission. I did, and talked to a Mr. Steve Lechnowsky. I told them that as I worked on a ship, it would be hard for me to see him personally, so on May 11, 1982, I wrote him a letter explaining what had happened to me on April 14, 1982.

"In the letter, I asked him to keep in contact with you. Do you have a copy of the letter that I wrote to him? On May 21, 1982, a Staff Sergeant R. Prior called my home and talked to my wife and said that he was investigating the incident. On May 26, 1982, I took time off the ship, 20 days, for treatment on my arm." Here it is, Mr. Attorney General, listen to this. "On May 27, 1982, I called Staff Sergeant R. Prior at"—telephone number such and such—"and he told me that if the officers did something wrong they would be reprimanded, but if they hadn't done anything wrong I could be criminally charged with public mischief if I pushed for an investigation."

Hon. Mr. McMurtry: Who told him that?

Mr. Riddell: It was Staff Sergeant R. Prior who told him he could be criminally charged with public mischief if he pushed for an investigation.

"I told him to go ahead with the investigation. I phoned him again on June 15, 1982, and told him I would be aboard ship in Hamilton, Ontario the following morning. Prior and another officer, Mr. Ralph, came aboard the SS J. F. Vaughan and interviewed me on June 16, 1982. A letter from the Metropolitan Police Complaints Project Act, 1981, file no. 330-5-82, dated June 17, 1982"—

10:40 a.m.

Hon. Mr. McMurtry: Excuse me, could you just repeat that file number?

Mr. Riddell: File no. 330-5-82—"12 pages long was sent to my home address. I hope you have a copy of this fairy tale. There is not a man from the police force that would have anything to gain by telling the truth and none of them did. Sergeant Udall's report, starting page 4"—

Hon. Mr. McMurtry: What was the date of that file?

Mr. Riddell: June 17, 1982.

Hon. Mr. McMurtry: I'm puzzled because in the letter you showed me from Metro police, which is dated August 19, 1982, they said, as I've already mentioned, "You have the right to request a further review." But the letter you've

referred to, the long letter that he apparently got from the complaints commission was dated in June. We still don't know at this moment whether he pursued the matter with the public complaints commissioner after August 19.

Mr. Riddell: It may come out later in this letter. It looks like he is giving us the scenario as it occurred. Let's see if he did.

"Sergeant Udall's report starting page 4: One man did not put the handcuffs on me and I did not willingly put my hand behind me to be cuffed. He states that he did not see any force used. They had a glossy photograph of the man they wanted. There is absolutely no resemblance between him and me. Anyone who couldn't tell the difference between me and the man they wanted" — Here is a press report of the man they wanted and his picture. There's the guy they were after and there is absolutely no resemblance between this chap and Morris, whom I saw for the first time in my office on Saturday.

He came in and he spent a good deal of time going over this information with me because he really feels he has been done considerable injustice.

"Anyone who couldn't tell the difference between me and the man they wanted has extremely poor eyesight and a lot could happen that he would not see. I was never asked if they could have a look in my cabin. I was shoved into the first room with the door open and it happened to be my office adjoining my cabin.

"Udall claims to have put the cuffs on me. Boothby seems to think it was Mahoney. I don't recall anyone putting a finger between the cuffs and my wrist to check for tightness. It could not have been done. The marks on my wrists from the cuffs being too tight were still on my wrists when I arrived in Goderich five hours later.

"I did not raise my legs. My legs, right leg first, was lifted off the floor until my boots were eye-high and my pant legs, one at a time, was pulled up to check my legs for tattoos or bullet wounds. In the position I was in, it would have been almost impossible to lift my legs for them to check.

"Boothby says that he did not see anyone twisting my arm or elbowing me. He isn't even sure who put the cuffs on me, so how could he see what went on? He also had a picture of the man they wanted, so check his eyes, too. This man, Superintendent Ross Wren, is a vicious liar. I told Sergeant Prior on June 16, 1982, that I thought that Wren was terrified and Prior told me that he was. The incompetence and plain blindness and stupidity of this creature came

close to costing me my life. I am completely certain and sure that if I had as much as reached for my handkerchief to blow my nose, I would have been shot, as he had signalled the other officers that were armed.

"Meeting a stranger on the deck of a ship and having him put his arm on my shoulder doesn't happen every day, but that did not alarm me. He most certainly put his right hand into my right trouser pocket. He has denied this and he is lying. This is when I became alarmed. Also, they did not identify themselves as police officers. I do not have any Ontario Provincial Police buddies, and at no time did I say it would be something to tell my OPP buddies over a beer.

"This man is also blind and a liar. At no time was I ever sitting in a chair and at no time was I ever handcuffed with my hands in front of me. Again, I did not lift either of my legs myself. Also, the wallet was removed from my pocket and dumped out on my desk. I have yet to find my OHIP card.

"Some time after June 16, 1982, a letter was received at my home from Robert K. Cornish, chief, Toronto Port and Harbour Police, dated June 8, 1982. This letter makes an even bigger liar out of Wren, and also they did not identify themselves. I hope you can also get a copy of this letter.

"Then I get another letter from the Metropolitan Police Force Complaints Project Act, 1981, file 330-5-82, from Staff Sergeant R. Prior, dated July 13, 1982. The first letter was, type of report, interim. This letter was, type of report, final. It stated, June 18, 1982, that the Workmen's Compensation Board record showed that I filed a complaint on May 17, 1982, for an injury to the inner right arm from a steam burn received while working. I had my inner left arm scalded at that time, not my right arm. I am almost entirely right-handed, and as my right arm was so sore from the twisting I received from being cuffed that I was trying to use my left arm to do what I normally would be doing with my right arm when I was burned. I still have some of the scar on my left arm.

"I was off the ship from May 26, 1982, to June 16, 1982. On May 27, 1982, I had my arm X-rayed at the Alexandra Marine and General Hospital in Goderich and saw a Dr. Conway. He was taking the practice for our family doctor, Dr. James Rourke. He wrote me a prescription for two types of pills, one for the inflammation of the arm and one for pain. I also had seven sessions of therapy on my right arm at the same hospital before returning to work. During these

20 days I did absolutely no work, and my arm at this time is healed and I am able to use it now as I did before this incident.

"As chief engineer with the company I receive 60 days' holidays with pay during the season. While home for the 20 days I did not lose any pay, but I do not figure that time as a holiday and I feel that I should be compensated for the lost time and also for the pain and loss of sleep. Believe me, I have laid awake a lot of nights thinking of how close I came to being a dead man. It is really scary.

"In April you told me that you would take this case, and as my lawyer I am giving you permission to get copies of all these letters if Steve Lechnowsky has not had them forwarded to you.

"Also, the Niagara Regional Police were involved, but I have not heard about them at all.

"Would you please let me know if you think anything can be done about this incident.

"Thanking you very much, I remain

"Yours truly, Ralph E. Morris."

That was the letter he wrote to Pat Duffy, the lawyer in Toronto.

What he asked me when he visited me in my office was: "Find out, for one thing, who it was that set me up. Why did they insist that I was the man who was guilty."

Here I have a letter that was dated June 8, written by a Robert Cornish. One paragraph reads:

"On the morning of April 14, 1982, information was received by our superintendent Ross Wren from the Metropolitan Toronto Police to the effect that the Niagara Regional Police held a warrant for the arrest of a man named Ralph Morris and that this man was a member of the crew of the vessel Judith M. Pierson docked in Toronto."

He wants to know who set him up. He wants to know who provided the information that a killer was a chief engineer by the name of Ralph Morris on the Judith M. Pierson ship. That is the one thing that he asked me to pursue, so I bring it to your attention.

Also, I think that the whole thing should be reviewed, because you can see that he does not believe what the police have told the Office of the Public Complaints Commissioner. He is strongly of the opinion that he was definitely manhandled when they got on to that ship. As soon as he introduced himself as the chief engineer, they grabbed him, forced him to the rail, got the hands behind his back, twisted his one arm up so that he could not move, and took

him down and had him fingerprinted and all the rest of it, only to find out that the guy they wanted happens to be someone that does not resemble him in any way, a chap in Port Colborne who shot his common-law wife.

10:50 a.m.

How would you like it, Mr. Minister, if you were a chief engineer on a ship—another thing he told me was that had he been just starting his job, chances are he would never have been allowed to return to it. Owing to the fact, however, that he has been working on these ships for a number of years and had established a good reputation and is a good man on the ships, his employers laughed at it. They thought it had to be a joke, that he would be charged with murder.

I am just asking you, how would you like it if eight policemen, some of them armed with shotguns, boarded the ship, grabbed you, man-handled you and then told you you were charged with first-degree murder? Surely they have to have more proof than they had when they boarded that ship.

I think this whole thing should be reviewed. As I said, I too would be interested in knowing who set him up, who was it that said the murderer was the chief engineer on the ship known as the Judith M. Pierson? Surely your people must know. They must have some idea who said, "The guy we want is Ralph E. Morris, chief engineer on the ship the Judith M. Pierson." And they did not contact him for two months after, either him or his employer, to advise him that he was the wrong person. It was two months before they ever contacted his employer and said, "We must inform you that we apprehended the wrong person."

There has to be something terribly wrong about this whole thing. I simply ask that you review it if you would.

Hon. Mr. McMurtry: Mr. Riddell, I am sure it was a very upsetting and obviously a frightening experience for this gentleman. I would be interested in finding out, and I will do so, what happened with his complaint in relation to the public complaints commissioner. There seems to be a silence, as far as the written material is concerned, as to whether or not Mr. Morris proceeded as was suggested, at least as an option to him, in the letter from the Metropolitan Toronto Police on August 19, 1982.

I see the file number you gave us, 330-5-82, would appear to be the file number of the Metropolitan Toronto Police, not the public

complaints commissioner. Do you have any correspondence? I think there was a letter there from the public complaints commissioner that perhaps has another file number on it. It might assist us in finding out how the matter was left so far as the commissioner is concerned.

Mr. Breithaupt: It is file 594 of the public complaints commissioner.

Hon. Mr. McMurtry: Thank you. This is your letter too. I shall give it back to you, if you like.

Mr. Riddell: If it is all intact, you had better give it back to him.

Mr. Renwick: I have a number of matters which I hope will not take up too much time on this particular vote.

I was speaking with Mr. Breithaupt and I believe it would be possible for us to pass all of the votes this morning, except for the last vote on the administrative tribunals, and leave that one until tomorrow, if possible.

Specifically, under this particular vote, I am somewhat saddened, or deeply upset this morning, as I have been over the weekend, about the double murder in my riding. WoodGreen Community Centre, of course, is synonymous in people's minds with Riverdale. The murder of Leonard Darwen, who was some 25 years of age, and Kevin Yedon, who was a boy of 15, is a tragedy to which we are not accustomed in our area.

I had the opportunity to visit briefly with the parents of both of the victims last night. They say it is a very difficult experience, and so forth. Each of the burial services will take place this morning and early this afternoon, and we hope that the police of division 55 will be able to find out who committed these murders.

The first matter is of deep concern to me. I very seldom raise matters of such seriousness. Perhaps the easiest way to deal with it would be to refer to the search warrant that was issued on May 11 of this year by Justice of the Peace Wickham to one of the members of the Metropolitan Toronto fraud squad with respect to documents that may have related to criminal offences involving Norcen Energy Resources Ltd.

It is my understanding that in the execution of that search warrant documents were obtained from the law offices of Davies, Ward and Beck, and Osler, Hoskin and Harcourt, which, I understand were the two Toronto law firms that act for that company and for some of the officers and directors of that company.

Those documents were obtained within the

next couple of days. Then, to my surprise, I find that Mr. Conrad Black saw fit to seek out a meeting with you and met with you very shortly after the execution of the warrant.

The warrant related to evidence with respect to possible charges under, I think, sections 324 and 326 of the Criminal Code. I would like to find out from you, sir, as much as I can about the circumstances of that meeting and what took place at it, as fully and completely as you can let me know. Then I would like to know what took place as a result of that meeting involving officers of your ministry with respect to that investigation the Metropolitan Toronto fraud squad was carrying on.

I would like to have the information as detailed and specific as it is possible for you to give me with respect to the original meeting and with either meetings or discussions or other matters which occurred following that, particularly as to who was involved in the various meetings, what transpired and to what extent this most unusual circumstance took place.

Hon. Mr. McMurtry: Would you like me to interject now?

Mr. Renwick: Yes.

Hon. Mr. McMurtry: There have been some press reports in relation to this matter, particularly in the Financial Post.

Mr. Renwick: I think all of the Toronto newspapers have, at one point or another, dealt with this matter.

Hon. Mr. McMurtry: I first heard about the matter, not about the search warrant—I knew nothing at all about the investigation—when we got an urgent message, if I recall, from Mr. Conrad Black's office and also his solicitor's office, Osler Hoskin and Harcourt, to the effect that there is some activity taking place in the Ontario government, within our ministry, that was having an adverse affect or interfering with some litigation in Ohio dealing with Hanna Mines.

11 a.m.

The litigation wasn't identified, and if it had been, I must admit I wouldn't have known anything about it. It was communicated to my office that this was of the utmost urgency because of the pending trial in the United States. I arranged for the Deputy Attorney General and the director of the civil branch of our ministry, Mr. Blenus Wright, to meet in my company with Mr. Black's solicitors, Mr. Fred Huycke of Osler Hoskin, and another solicitor

who is actually from the United States—I forget his name—and Mr. Black.

When the meeting took place, I learned of two things for the first time: there had been a search warrant issued with respect to this investigation, an investigation, I repeat, of which I was not aware, and there were some details given about this litigation in the United States.

As I recall, the prime concern, from the standpoint of the solicitors representing Mr. Black, was that the existence of this search warrant, which had to deal with a possible offence under the Criminal Code, had been injected into the civil proceedings in the United States. It had been alleged that an investigation taking place here was creating an unfavourable atmosphere with respect to these civil proceedings in the United States.

I'm not in a position to give you details about the nature of the investigation because it's still ongoing. But again I want to emphasize that this meeting was the first time I realized there was such an investigation. As a matter of fact, I thought it was just some civil matter, and this is why I had Mr. Blenus Wright there and not anybody from our criminal branch.

At that point, having heard their concerns about this investigation being injected into the civil proceedings in the United States, in their view to create this unfavourable atmosphere so far as Mr. Black and his associates were concerned, I simply turned the matter over to the Deputy Attorney General and had no further communication with Mr. Black or anyone else about the matter. Perhaps the Deputy Attorney General can give you some of the details as to what transpired, given your understanding that there is still an ongoing investigation.

Mr. Renwick: I would appreciate it if the Deputy Attorney General would pick up the story at that point as to what then took place because I would like to have the sequence of activities very clearly on the record.

Mr. Dick: Mr. Chairman, subsequent to that meeting, as the Attorney General said, he left it with me to review the facts given to us at the meeting we had with these individuals, and that I did. In doing so, it was obvious from the circumstances that an investigation was under way. I brought Mr. McLeod, the assistant deputy in charge of the criminal division, in on it and provided him with all of the information that I derived from the course of that discussion and the circumstances that these people raised that caused them concern, both with respect to

the American litigation as well as the investigation under way in Ontario.

Subsequent to that time, I did receive a call from the Canadian solicitors for Mr. Black. They just more or less described in a little more detail the circumstances we discussed generally. They provided me with that information and so on.

In the course of that, we reviewed with the appropriate police officers, through Mr. McLeod, what was going on with respect to the investigation.

Mr. Renwick: Could you go somewhat more slowly about that. You reviewed the facts at that time?

Mr. Dick: Yes, the facts as given to us by the individuals who had met with us. At that time we didn't have any report from anybody else.

Mr. Renwick: Which were that there had been a search warrant executed against the solicitors of the two law firms acting for Norcen. Is that a fact?

Mr. Dick: This was what they suggested, that there was such a search warrant and so on and the circumstances you describe. That was clarified further when the solicitors spoke to me on the telephone. In that context, I discussed it with Mr. McLeod. Subsequently, he obtained all the background information.

Mr. Renwick: Was the next meeting with Mr. McLeod?

Mr. Dick: The only meetings I had were with Mr. McLeod. I never met with the solicitors; I spoke to them on the phone once in a while. If they called me I would speak with them, but I never met with them and I never subsequently met with Mr. Black or any of the other persons involved. I met with Mr. McLeod, who was given the direction of the investigation, as far as we were concerned, and he carried on with it.

Mr. Renwick: What were your instructions, suggestions, advice or direction to Mr. McLeod?

Mr. Dick: My instructions were essentially that, having received this information, would he pursue it with the police who were carrying out the investigation and with any persons in our ministry who had the carriage of that aspect in so far as it related to us.

Mr. Renwick: Why would you consider that it was necessary to pursue the matter?

Mr. Dick: It was necessary to pursue it because of the suggestions. Something had happened in our ministry that had interfered with some process in which this person was

already involved. At that time I didn't know who it was or what the circumstances were. I wanted to find out what our contacts had been, our relationship with the police making the investigation, the circumstances of the search warrant, its execution, and the system in the United States and how that related together. That was what I discussed with Mr. McLeod and what I asked him to pursue with the investigating police officers and any appropriate officers in our ministry.

Hon. Mr. McMurtry: I want to emphasize one thing that concerned me and that I left with the deputy. I have already stated that it was very unusual to allege that a criminal investigation, which I was not even aware of, was being used in an attempt to influence the outcome of a civil trial in the United States.

I must admit that this has been a rather novel allegation. Obviously the Deputy Attorney General agreed that the matter should be pursued because the suggestion was—it went a little further than that, quite frankly, and we have no evidence to suggest that there was any substance to it—that the Metropolitan Toronto police and someone in our ministry were being manipulated in relation to pursuing an ongoing criminal investigation in order to influence the results of a civil action in the United States. It is a highly unusual and serious allegation.

Mr. Renwick: That is a good part of my concern about this. Let me see if I can phrase it accurately as to what the allegation was.

Hon. Mr. McMurtry: The Deputy Attorney General said he wanted to set that to rest. This is how it was presented to me initially, and it turned out to be not well founded. But when an allegation of that kind is made, it has to be pursued.

Mr. Dick: Very briefly, the outcome of it was that Mr. Black and his solicitors' perception of the circumstances was understandable. What happened was that in the litigation in the United States, the American judge trying that particular action made an order prohibiting the publication of certain relevant documents that were produced in court. In the execution of the warrant that was properly issued and properly executed by the officers in this jurisdiction, some of the documents that were included in that warrant were the same information and related to those things that had been made the subject of a nondisclosure order in the United States.

Therefore, as the solicitors who were involved

in the litigation became aware of these things happening, they logically informed their principals in the United States that the documents which were the subject of a nondisclosure order in the United States were being taken into public possession by a warrant under appropriate judicial authority in this country.

In that context, there was an exchange of information which, in my opinion, was perfectly proper. The solicitors were merely advising their principals in the United States of what was transpiring and what documents were then being made public.

11:10 a.m.

Mr. Renwick: I am not concerned about the reasonableness or otherwise of what the solicitors did. I understand that there is nothing mysterious about what is going on. I understand that the allegation which prompted the Attorney General in the first place to turn the matter over to you and which motivated you is an allegation that there was interference somewhere within or, to use the Attorney General's expression, manipulation of somebody in the police department or in your ministry to interfere with this civil action in the United States. Is that what prompted you to take some action?

Mr. Dick: That was just one part of it. The part that was made in very general terms in the discussion was that something had happened. Whether it was attributable to an individual or the system itself, I have no idea but it was all mixed up in their suggestion of what had transpired.

The roles of the police and the roles of the individuals in the ministry that were interpreted by them as being a manipulation were really that these people in doing these things had to make those contacts. The police had to make a contact with the solicitor in the execution of the warrant. The appearance of a police officer going to that particular law firm which related to an American law firm was construed as being some type of connection that was intentional or whatever.

In my view it was not. After we had reviewed all the circumstances the solicitor who had the documents logically acted for a party of interest in the litigation and he was logically acting as the agent of an American principal. So the suggestion that the officers had been in cahoots with somebody or that the counsel and the ministry had been in cahoots and was doing something as part of an arrangement merely appeared on the surface. In actual fact, it was

just a normal and routine contact between solicitors and so on.

Mr. Renwick: We are jumping quite a long way down. I don't want to take up a great deal of time on this matter. All I want to know is the sequence of events. I take it that the Attorney General was interested, turned it over to you, and you were interested because this allegation was made that some kind of interference was taking place, somebody was being manipulated in the police or in your ministry, or both, to do something which required you to take some action. Is that the substance of it?

Mr. Dick: No, with respect. Each time you mention the interference by a person, in my sitting and listening to the meeting and the first encounter with it all, it sounds as if the Canadian process was interfering with the American process in some fashion and as part of that the people in my ministry or the police or some other people—

Mr. Renwick: All right.

Mr. Dick: I just don't want it to focus on interference by someone.

Mr. Renwick: The allegation was that something was taking place that they didn't like.

Mr. Dick: That's right.

Mr. Renwick: You felt that it was something that you should investigate and find out about, so you dealt with Mr. McLeod. Perhaps Mr. McLeod is the appropriate one, sir, if that's in order, to tell us what the next part of that was.

Hon. Mr. McMurtry: To the extent that he can, given the fact that there is an ongoing investigation.

Mr. Renwick: I am not interested in the ongoing police investigation. I know it is ongoing.

Hon. Mr. McMurtry: Mr. McLeod is here. Perhaps he would like to add anything to this.

Mr. McLeod: How much I can add, Mr. Renwick, in view of the fact that the investigation is still ongoing, other than to—

11:20 a.m.

Mr. Renwick: I don't need to know anything about the investigation. I know what's in the press about it and I know what the basis of it is. I know it relates to the statement of October 27, 1981, and that there was an investigation by the Metropolitan Toronto fraud squad. I believe that investigation is still continuing. I am concerned about the sequence. I have the sequence now from the meeting between Mr. Black and his solicitors and the deputy and Mr. Blenus

Wright and I have what the deputy has now told me about the action he took. I would like you to tell me now what discussions, meetings or actions resulted from your involvement in this matter.

Mr. McLeod: I will pick it up from the point the deputy brought me into the picture. He asked me to look into the matter and oversee the continued involvement of the criminal law division of our ministry, I did precisely that and was assisted by Mr. Harry Black, the deputy director of the crown law office, criminal. We performed the role of crown counsel, advising the investigating authorities during the course of their investigation—

Mr. Renwick: Could I interrupt? This is not a cross-examination for him at all. I am interested in the sequence of events. Was the criminal law division involved at that time in any way? At the time you picked the matter up, was it a matter within the criminal law division? Was anybody in the criminal law division involved in this matter?

Mr. McLeod: There is a lawyer in the civil division of the ministry who in the past has taken on the role of being a lawyer in the criminal law division on a temporary basis from case to case, Mr. Brian Johnston. He was involved in this in a temporary role as he had done in earlier cases. He was the crown counsel who had been involved with the police up until the point I was briefed with respect to the matter.

Mr. Renwick: Up to that point, did you know anything about it?

Mr. McLeod: I did not.

Mr. Renwick: Not anything at all? So you were starting out from your discussion with the deputy?

Mr. McLeod: That's correct.

Mr. Renwick: What did you do? What took place?

Mr. McLeod: I am sorry if I am hesitating, but I have to be extremely careful in light of the fact the investigation is ongoing.

Mr. Renwick: I appreciate that.

Mr. McLeod: I briefed myself with respect to the matter as quickly as I could. Shortly after, I appointed Mr. Harry Black to take over the day-to-day active involvement of advising the police and to keep me briefed on a regular basis the same way as he and I would work together on any case where, owing to the complex nature of it, the police required advice on a regular basis during their investigation.

Mr. Renwick: So you took Brian Johnston off and you put Harry Black on the case?

Mr. McLeod: That is correct.

Mr. Renwick: Why did you do that?

Mr. McLeod: In light of the ongoing investigation, Mr. Renwick, the most I can say at present is that I was not satisfied with the work Mr. Johnston had done up to that point.

Mr. Renwick: You were not satisfied?

Mr. McLeod: That is correct.

Mr. Renwick: In what respect would you be not satisfied with what he had done?

Mr. McLeod: We are into an area where it would be inappropriate for me to comment any further in this public forum in light of the ongoing investigation.

Mr. Renwick: I would like to come back to that in just a moment if I can, but would you tell me whom you've met with?

Mr. McLeod: I met with Mr. Black; his immediate superior in the chain of command, Howard Morton; Mr. Blenus Wright, the head of the civil division; the investigating officers from the Metropolitan Toronto Police Force; Mr. Johnston; and representatives of the Ontario Securities Commission.

Mr. Renwick: Was this a series of meetings—

Mr. McLeod: Yes.

Mr. Renwick: —or one meeting?

Mr. McLeod: I'm sorry, I don't have my notes here today, but I met over a number of days with one or more of those people I just referred to on a number of occasions.

Mr. Renwick: In other words, you involved yourself very extensively in this if you met or discussed it with all of those persons who were involved.

Mr. McLeod: No more so than I do in a number of other cases that I am involved in at present.

Mr. Renwick: You and the deputy and the minister have taught me over the years that the role of the crown law office in all its aspects while a police investigation is going on is simply advice.

Mr. McLeod: That is correct, advice to the police on all of their functions in the course of the investigation.

Mr. Renwick: What advice did you give them?

Mr. McLeod: Again, I don't think I can comment in light of the ongoing investigation.

With respect to that, I can, if it's of any assistance to you, go over ground you and I might have gone over with respect to other cases. The police have a job to determine whether or not there are reasonable and probable grounds on which they believe an offence has been committed. That function involves a number of questions with respect to the precise investigative steps they should take, questions as to the precise charge or charges that are appropriate if there are going to be charges, the people involved and the admissibility of evidence. There is a whole range of questions that we would ordinarily advise the police on.

Mr. Renwick: In this case, the Metropolitan Toronto police didn't come to you at all. You called them in. Is that my understanding of it?

Mr. McLeod: No. The Metropolitan Toronto Police, as I indicated, had earlier been involved with Mr. Johnston.

Mr. Renwick: They had gone to Brian Johnston in the ordinary course and received advice from him as to what took place. As a result of the intervention, and I'm not drawing any causal connection, following Mr. Conrad Black's meeting with the Attorney General and the subsequent steps that took place, you decided that what Brian Johnston had done was not proper. You were not satisfied with what he had done. What was it that you weren't satisfied with?

Mr. McLeod: I'm sorry, because of the investigation, I think it would be inappropriate for me to comment in more detail in this public forum. When it is possible to discuss that detail, I would be happy to do so with you. I don't think that's appropriate at this time.

Mr. Renwick: I say this quite advisedly. To anyone's knowledge in the ministry, and yours in particular, Mr. McLeod, and the deputy and the Attorney General, was there any suggestion, proposal or recommendation of any kind that the Criminal Code was not the appropriate route to follow and that this was basically a securities matter and that the Toronto police should back off?

Mr. McLeod: That is not an accurate statement. For me to go further and get into the detail of the type of advice that we gave to the police and are still giving to the police on a regular basis would be quite wrong. As I say, at the appropriate stage later, I would be happy to go back through it step by step with you at your convenience. Unless I am directed otherwise, I really think it would be most inappropriate to

discuss the nature of the advice we have been giving and are continuing to give to the police.

Mr. Renwick: I suppose I will have to leave it at that point. I think the actions within the ministry created an unusual pressure on this matter. I am really quite astounded. I am not making allegations of any kind. The sequence of events disturbs me.

I would have thought that once it was seen to be a police investigation, then the role of the ministry would have been much more traditional, much more passive and much less interventionist than it was in this case. That disturbs me about it.

Hon. Mr. McMurtry: I think you have a totally false picture as to what has occurred then. The role of the ministry in this case has been no different, as I understand it, to that in hundreds of other important cases during which I have served as the Attorney General. One unusual aspect in this case from my standpoint was the allegation made that the criminal investigation was somehow being used to influence the outcome of civil litigation in the United States.

Apart from that rather unusual allegation, the manner in which this case has been handled, so far as the law officers of the crown and the police are concerned, has been no different to that in many other cases I am personally familiar with. That's my understanding. I am very concerned that the wrong impression not be created in that regard.

Mr. Renwick: If I may just on this matter, I still do not understand why Mr. Brian Johnston was removed from the case. Why was it appropriate, as a result of Conrad Black's visit with the Attorney General, that it should have involved this extensive interconnection through to the Ontario Securities Commission, with Mr. Brian Johnston, with respect to the investigating officers of the Metropolitan Toronto Police, with respect to Mr. Howard Morton and Mr. Harry Black. All of that means a degree and extent of activity which is contradictory to what I assumed would have taken place.

Hon. Mr. McMurtry: I'm sorry, you are misunderstanding—

Mr. Renwick: I would have thought that as soon as it was seen to be a police investigation, you would have, quite appropriately, reported back. Because of the reasonable apprehension of the solicitors of Norcen and of Mr. Black, you would have reported back and said, "This is a matter which is being investigated by the Met-

ropolitan Toronto police," and that's it. When consulted by the police in the course of their investigation, either with advice with respect to charges which should be laid or what in the course of the investigation should be done, I would have thought you would have restricted your role to one of advice, knowing full well, as we all know, that Brian Johnston is a very able lawyer with respect to these matters.

I suppose I perceive must leave this matter now until it's over. It's a matter of immense principle within the ministry and I want to reinforce that there must not be seen to be, let alone be, any interference with police investigations.

Hon. Mr. McMurtry: I trust you're not suggesting that there was any improper interference, Mr. Renwick.

Mr. Renwick: I have not used any term such as "improper."

Hon. Mr. McMurtry: You're creating a smokescreen here that really isn't quite—

Mr. Renwick: I have said there was pressure. I said a sense of pressure was created by that activity, which seems to me, subject to further explanation, to have been inappropriate.

Mr. Dick: Mr. Chairman, may I make an observation. It seems you mentioned Mr. Johnston several times. I was involved with Mr. McLeod, who came to me when he indicated he thought we should have a change of counsel. It was, essentially, because Mr. Johnston was originally hired in the ministry to work in the civil end of the ministry. He was hired on that basis.

11:30 a.m.

For whatever reason, in the process, I guess because of his background and experience, he became involved in this particular matter. When I became aware of it, with my logical bent, what I did was to ask Mr. McLeod to look after it. It was obviously a criminal investigation and there was a commercial aspect of it. Again, it's far from unusual, because Mr. Morton, Mr. Black and Mr. McLeod have been involved in many of the commercial types of transactions that necessitate an investigation.

When Mr. Johnston seemed to be giving the direction to the police, the advice to the police and so on, and doing that which is normal for one of the crown counsel to do in the course of any police investigation, in my view, after discussing it with Mr. McLeod, I thought there were other persons of greater experience with respect to the criminal prosecutions who should

be handling it. For that reason, I approved of Mr. McLeod's and Mr. Wright's suggestion that we should change counsel on it. That was not unusual, in my view, nor was it a matter of suasion or anything else. It was something that was almost routine, considering the circumstances, of choosing a person to be giving attention to a particular prosecution.

Mr. Renwick: I would like to know who are the representatives of the Ontario Securities Commission who are now involved in this matter and what they're doing. Then I think it's appropriate that I leave it simply on the basis that all that we have discussed and all the comments I have made are from reading the reports of this matter.

Mr. Chairman: Mr. Renwick, Mr. Conway wants to take a supplementary somewhere along here.

Mr. Renwick: I'm quite happy. I just want the names of the OSC representatives whom Mr. McLeod may have consulted about this. Do you recall?

Mr. McLeod: I would have to go back and check my notes to be exactly sure. I have certainly dealt with Mr. Salter and with at least one lawyer on his staff, I believe Mr. Malcolmson. Whether there were others, I don't recall at the present time.

Mr. Renwick: Is my understanding correct that the police investigation, and by that I am talking about the Metropolitan Toronto Police investigation of this matter, is still an ongoing and continuing investigation?

Mr. McLeod: It is. Could I be permitted to add one further comment? Mr. Renwick, it may be that I haven't explained myself as clearly as I ought to. It may be that you haven't had the opportunity to be as fully aware as I thought perhaps you might be with respect to the way in which crown legal advice is given to police officers in this province with respect to commercial fraud investigations.

Our ministry, or more particularly the criminal law division, has a reputation throughout the country that I think is the envy of a number of other jurisdictions, probably through no fault of mine and certainly through the good work of many other people, for providing extensive advice to the police during the stage of their investigation at which there are so many questions they have to decide and on which they find our advice helpful. For you to suggest that the fact that Messrs. Black, Morton and myself were involved with respect to this matter is

somehow unusual, with the greatest respect, you're just simply not aware of the way in which the system has operated for a number of years in this province.

I have perhaps five other cases ongoing at the present time where two or three of the four or five or six most senior people in the criminal law division are involved in order to get the best possible advice from as many minds as our resources permit us to allocate to a particular case. That doesn't mean that ultimately down the road we're going to have three prosecutors doing the case. We will have one prosecutor or sometimes two involved. At the early stage where the difficult decisions have to be made, the police forces seem to find that it's very helpful to them to have that kind of involvement and that kind of assistance.

Mr. Renwick: I do know something about it; I do not know as much about it as you or the deputy or the Attorney General does. My questions were asked this morning because I have a deep and particular concern for the very reputation to which you address yourselves.

Mr. Conway: I have just a brief supplementary, Mr. McLeod. You mentioned earlier along in your statement to Mr. Renwick that there had been a series of meetings involving yourself and solicitors for Norcen.

Mr. McLeod: No.

Mr. Chairman: No, he never said that.

Mr. Conway: Sorry. I want specifically to know how many times you met with Mr. Conrad Black. Can you recall?

Mr. McLeod: I never met with Mr. Conrad Black, notwithstanding what the Financial Post or some other press agency reported. I have never met the man and, quite frankly, I do not think I would know him if I saw him on the street.

Mr. Renwick: The factual statement in the sequence of events is my understanding of what did take place. I have some other matters, but I do not want to preempt all of the time.

Mr. Chairman: Perhaps Mr. McKessock could go with his one particular concern and then we will come back to you, Mr. Renwick.

Mr. McKessock: Thank you, Mr. Chairman. Mr. Minister, I did give you notice last week that I would bring this situation before you today. It is the case of Mr. Ken Reay who had his cattle trailer disappear at four o'clock in the morning on September 22. Just to draw an analogy, I suppose it would be similar to your coming into

your office to find that your duplicator or your computer or typewriters had disappeared in the middle of the night.

He took this as a theft and called the OPP at Walkerton. The OPP appeared to do very little about it. They were of the opinion that the trailer was removed by a bailiff. Mr. Reay had been presented with no court order or anything of the kind, so I take it this was not the case. Should he not have been presented with something if somebody was seizing the trailer?

Hon. Mr. McMurtry: I gather from the information I have to date that this was seizure pursuant to civil process. I do not know if we have all the details yet, but certainly Mr. Rae, the crown attorney—not to be confused with the other Reay—was of the view that this was a civil matter, a civil dispute, and that the case was not appropriate for a criminal charge. One of the essential ingredients in a charge of theft is that somebody without colour of right—I think words to that effect are used in the Criminal Code—deprives somebody, either temporarily or permanently, of property. In this case it would appear that the person who took the property had reason to believe that he would not fall within that definition of without colour of right because of the lien that he had on the machinery. For that reason, there would not be the criminal element that would warrant a charge.

There may well be a civil dispute as to the nature of the process, but to charge somebody with a criminal offence you have to, of course, prove the mental element, and that is that the person acted without knowing that he had no right to take the machinery. Given the fact that he had a lien on it, it would be very unusual to lay a criminal charge because you just could not prove that mental ingredient beyond a reasonable doubt because of the charge that the individual had on the property. While there might be some civil dispute as to the seizure, in the view of our crown attorney and from what I have been able to learn about the case, it would not be a case for the criminal courts.

11:40 a.m.

Mr. McKessock: To go back to my analogy about your equipment, if you came in in the morning and found—

Hon. Mr. McMurtry: I don't think it is a very good analogy, with all due respect.

Mr. McKessock: Why not? If it had disappeared in the middle of the night, how would you treat it? Should you have been presented

with something saying there was a lien on that equipment?

Hon. Mr. McMurtry: That, as I say, would depend on all the circumstances. In this case there was a lien on the equipment; we do know that as a fact.

Mr. McKessock: Should there not have been a court order?

Hon. Mr. McMurtry: The person who took the property did have a lien on the property.

Mr. McKessock: And that means he doesn't need a court order to pick it up?

Hon. Mr. McMurtry: As far as a charge of theft is concerned, it would not amount, in our view, to a charge of theft. I cannot tell you at this moment whether all of the proper steps were taken civilly, but that would be a matter for the civil courts.

Mr. McKessock: If he took it in the middle of the night, he should have had a court order.

Hon. Mr. McMurtry: If the documentation he had was not in proper order, then that would be a matter for civil damages. I would think that the lawyer for your constituent is the person who would be in the best position to advise him as to his civil remedies.

Our position is not to advise him as to his civil remedies, which may or may not exist, but simply to say that the taking of the machinery did not involve that mental element that is a necessary prerequisite of a theft charge.

Mr. McKessock: Okay. If I may go on then, Genelcan Leasing say they had a lien on the trailer for \$23,000. A serial number search had been taken at the time Mr. Reay purchased the trailer two years ago, and this was under the Personal Property Security Act, prior to the purchase of the trailer.

The printout came back with only one lien registered against it, and that was with International Harvester. They issued a cheque to International Harvester and paid them off before they purchased the trailer, so to their knowledge there were no other liens against it. When a search was done, the printout came back saying there was only one lien and they paid that off and they figured they were in the clear. How else could they know there was another lien against it?

Hon. Mr. McMurtry: As I say, I am not familiar enough with the—

Mr. McKessock: Has your ministry looked into this?

Hon. Mr. McMurtry: As far as the civil aspect of it goes, the Personal Property Security Act—

Mr. McKessock: Has your ministry found out how there could be another lien against it when the printout came back saying there was only one?

Hon. Mr. McMurtry: I think your complaint is with respect to the fact that the criminal charge—

Mr. McKessock: I have several complaints.

Mr. Chairman: Maybe to assist, what kind of lien does the creditor believe they have? Under what kind of lien or security did they seize the—

Mr. McKessock: I will get into this when I go on further.

Mr. Chairman: Might I say the PPSA is under the Ministry of Consumer and Commercial Relations and not the Attorney General.

Hon. Mr. McMurtry: I have satisfied myself that the crown attorney was correct in the advice he has given the police, that there was not that necessary mental ingredient to support a charge of theft.

As to civil problems, we will have our civil people review it and get back from that aspect of it. I was sort of labouring under the misunderstanding that your prime concern was with respect to the failure of our local crown attorney to advise the police that a charge of theft would be appropriate in the circumstances.

Mr. McKessock: My prime concern was to get this trailer back to the Reays, who had it taken three months ago and—

Hon. Mr. McMurtry: I don't know if I can provide that service or not.

Mr. McKessock: This is at the height of their business of drawing cattle from the west, so it has cut off their livelihood.

Hon. Mr. McMurtry: Even if a criminal charge had been laid, that would not necessarily have resulted in the return of the trailer.

Mr. McKessock: I would like to read the letter I received from Mrs. Reay, the secretary of the company, who gives the problems in simple language.

"As you will recall, I called you in late September in regard to one of our trailers which had been stolen. I wanted to phone Toronto and prevent a new ownership being issued for the unit.

"On September 22, after we realized our trailer was missing, we phoned to the Walkerton OPP to report the theft. They informed us that

the trailer had been seized by a William Dunn. We were never notified by the police. Our neighbours told us the trailer was taken about 4:30 a.m. It is not unusual for trailers to leave at that hour, so they did not think anything unusual was happening. The Walkerton OPP gave us a number for a Brad Allan who works for Genelcan in Toronto. He said Genelcan had a lien on that trailer and had taken possession of it. We said that that was impossible because we had purchased it from Breadner Trailer Sales Ltd. in Kitchener in December of 1980. We financed it through the Continental Bank in Kitchener and had been making payments on it for almost two years. The payments were completely up to date.

"We also received a letter from Genelcan stating that they would sell the unit on or after October 12.

"We contacted our lawyer, Peter Fallis, in Durham and he began working on the case. Marshall Blackwell from the Mount Forest OPP talked to Ken"—this is Ken Reay—"and said he would talk to the crown attorney and see if they could seize the trailer and hold it until the matter was settled. The police located our trailer but they would not tell us where it was. We continued our own search and found it in Kitchener. We wanted to go and pick it up, but the police said we would be charged with theft if we did. The police would not seize the trailer and they would not lay charges against anyone who was involved with taking it off our property. It's very unnerving to know a person can come on to your property, remove something you own and never be punished for doing it. However, if we tried to get our property back, we would be charged. It would seem that there are two sets of laws, depending on who you happen to be. The Bailiffs Act was clearly violated.

"Our lawyer did a search on our unit to see if Genelcan did have a valid claim. It took 41 days for the information to be returned from Toronto. By that time our trailer had been sold by Genelcan and is now in Nova Scotia. We tried to have the police prevent the sale because if they did have a valid claim on the trailer, they sold the tires that were on the trailer. These were ours and are valued at \$3,000. The police did nothing.

"Our lawyer has sued Breadner Trailer Sales in Kitchener, where we purchased the trailer, but they deny any responsibility for the situation. The court case could drag on indefinitely.

"We haul furniture out west and bring cattle back. Furniture is very slow but the fall is the time when the cattle are moving. We did next to no work all summer and now when there is work to do, we are short a trailer. Also, we have to continue to make the payments on the trailer to the Continental Bank because if we do not, they will sue us for the balance of the money owing.

"We paid \$30,000 for the unit as well as the provincial sales tax. We have lost the unit, the money already paid to the finance company, the tires, the repair work done to it and the money for the additional payments. We have lost loads and we cannot afford to rent a trailer. We have a huge lawyer bill. In a very difficult economic time, this could certainly force us into bankruptcy. Our lawyer has written to the Mount Forest OPP, the Honourable Roy McMurtry, the Ministry of Consumer and Commercial Relations, as well as several other letters to see why nothing has been done. He has not received even one reply.

"We cannot understand why we are being victimized in this manner when we have done nothing wrong. This last year has been a real financial struggle for us and now to face possible bankruptcy because of this is very hard to accept.

"Perhaps you could get some answers for us because to date we have none."

11:50 a.m.

As you know, Mr. Fallis wrote you on October 25. It is just a short letter and I'd just like to go over it with you.

"Dear Sir:

"Please find enclosed a copy of a letter of October 15, 1982, forwarded to the OPP detachment at Mount Forest. We are advised by that detachment on October 25 that they have discussed the matter with the crown attorney at Owen Sound, Ontario, and he is not prepared to recommend that any charges be laid in Grey county. Our client purchased the 1978 Wilson Cattle Liner trailer in December 1980 from Wilson-Breadner Sales Ltd., a trailer dealer in Kitchener, for \$30,080. The trailer was removed on September 22, 1982, from our client's premises, without legal authority for entry thereon for the removal from that property, by a replevin order in which removal was effected by parties who were not bailiffs licensed to repossess property in Grey county. The trailer was removed under the authority of Genelcan Ltd., purported to be the owners of the trailer under a financing agreement unknown to our client and previous owners on title.

"Our client is more than distressed and upset by the fact that the crown will not pursue the matter, particularly in lieu of the fact that our client had equipped the vehicle with nine tires with a value in excess of \$3,000. Our client wrote to Genelcan Ltd. on October 15 and demanded their return in any event, as they did not have any colour of right in those tires. We are advised that on Thursday, October 21, Genelcan Ltd. sold the unit to a buyer from Nova Scotia, and we confirm our telephone conversation with Mr. Brad Allan of that firm on that date wherein Mr. Allan confirmed to this writer the receipt of that letter, advising of the sale and advising that they would not return the tires."

"Our client finds it incomprehensible that a police force with the reputation of the Ontario Provincial Police would not see fit to insist that charges be laid, informations filed, and that the crown would not support those recommendations, particularly when our client had lost over \$30,000 worth of value by a process that was not carried out in accordance with the law by persons who were unauthorized in law to effect repossession and by effecting an unauthorized entry and trespass upon his property, contrary to the law, and by flagrant disposition of equipment on the vehicle which was not the property of Genelcan Ltd. and to which it had no colour of right."

"In order to preserve the excellent reputation of the Ontario Provincial Police in this area and to support the public's belief that justice will be seen to be done in this area, we would ask you to immediately investigate this matter and cause the present decision of the crown and the Ontario Provincial Police to be reversed."

I would just like to ask you what have you done and what you intend to do in this area?

Hon. Mr. McMurtry: The Ministry of the Attorney General really has no mandate to pursue civil causes of action on behalf of individuals in the province. It is not part of our authority.

Mr. McKessock: Mr. Fallis keeps talking about the crown here.

Hon. Mr. McMurtry: Mr. Fallis may have some misunderstanding as to what the role of the Ministry of the Attorney General is. It is not to involve itself in disputes between individuals unless a crime has been committed.

Mr. Fallis himself says, "The trailer was removed under the authority of Genelcan Ltd. purported to be the owner of the trailer under a financing agreement unknown to our client and

previous owners on title." This was because they believed that they were the owners pursuant to this financing agreement.

I would think that one might like to know a little bit more about just how the sale to your constituent was transacted without the fact of this financing agreement being made known. I would think that this is something we might pursue. We are prepared to suggest to the Ontario Provincial Police that they discuss that aspect of the matter with your client. I am satisfied that the seizure of the trailer would not warrant a criminal charge. It may warrant civil proceedings, but the sale of the trailer would concern me. It was obviously sold to your constituent without his being told of this financing agreement.

Mr. McKessock: Obviously what the crown has said has to the OPP has stopped the OPP from doing anything.

Hon. Mr. McMurtry: No, that is not right.

Mr. McKessock: Why have the OPP not done something then?

Hon. Mr. McMurtry: I do not know what information has been given to the OPP in relation to the sale of the trailer to your constituent.

Mr. McKessock: But what about the seizure without any—

Hon. Mr. McMurtry: I have already said that, in my view, that is not a criminal offence, given the circumstances.

Mr. McKessock: They could also be charged under the Trespass to Property Act.

Hon. Mr. McMurtry: Your client could lay a charge of trespass, I suppose, if he wanted to.

Mr. McKessock: As far as you are concerned, the crown should not have said anything that will interfere with the police carrying out their responsibilities?

Hon. Mr. McMurtry: No. The police came to our crown attorney for advice as to whether or not a charge of theft was warranted against the people who seized the property on behalf of Genelcan, which had the financing agreement, and the crown attorney advised the police in an interview that would not warrant a charge of theft.

Mr. McKessock: What you are saying here is that you would like to have more information as to how this sale was elicited without it showing up on the record?

Hon. Mr. McMurtry: No. I think it is an issue as to whether or not there was any possibility of

any fraudulent misrepresentation in so far as to constitute a criminal offence in relation to the purchase of the trailer by your client from the vendor.

Mr. McKessock: How many different ways are there of putting a lien on a piece of equipment?

Hon. Mr. McMurtry: I really cannot answer that.

Mr. McKessock: Obviously they do not all show up under the Personal Property Security Act.

Hon. Mr. McMurtry: One would expect that they would in the normal course of events. As I say, we can try to obtain some additional information for you with respect to that.

Mr. McKessock: Can you tell me when you will be replying to Mr. Fallis on this matter?

Hon. Mr. McMurtry: One might also be slightly tempted to come to the conclusion that Mr. Fallis is looking for the Ministry of the Attorney General to provide legal advice that would normally be the responsibility of Mr. Fallis. We will ask our civil people to take a look at it.

Mr. McKessock: What about the fact that new tires have been put on this trailer? Would that not come under theft when they were well aware and must have known that the tires did not belong to them?

Hon. Mr. McMurtry: In these circumstances, I would not think a charge of theft would be appropriate.

Mr. McKessock: What do you mean by "not in these circumstances"?

Hon. Mr. McMurtry: In the circumstances of the refinancing agreement. The fact that the new tires were not noticed and taken off before the equipment was removed, in my view, would not warrant a charge of theft.

Mr. McKessock: Since Mr. Fallis has said they had no colour of right to them, do they have a responsibility to return those tires or to pay for them?

Hon. Mr. McMurtry: I think this is a civil matter and not a criminal matter.

Mr. McKessock: Did you say when Mr. Fallis can expect a response?

12 noon

Hon. Mr. McMurtry: We are really not a satellite office for Mr. Fallis, as far as providing him with legal advice goes. We will provide this for you.

Mr. McKessock: Will he be receiving a response to his letter?

Hon. Mr. McMurtry: We will send you a response, and we will consider whether we shall send a response to Mr. Fallis. I shall certainly respond to you.

Mr. Renwick: There are several things I think we could probably clear up fairly quickly. It is a miscellaneous group of things.

I am sorry that my friend the member for Renfrew North (Mr. Conway) has gone.

Can you tell me what is the remaining impediment now as to the Premier's releasing the Campbell Grant report? That was asked for again in the House recently.

Hon. Mr. McMurtry: I understand there are still matters proceeding.

Mr. McLeod: There are three appeals pending in the Supreme Court of Canada, Mr. Renwick. They are scheduled to be heard, as best we can estimate at the moment, in either the last week in February or the first week in March.

There are, as well, outstanding orders of the Ontario Court of Appeal permitting the crown to proceed with new trials with respect to other accused. The crown's decision with respect to that question has been postponed pending the outcome of the appeals in the Supreme Court of Canada. If the Supreme Court of Canada were to order a new trial with respect to any of those three accused who are before it, then the question of any new trial would, most properly in our view, be made when we know the final picture from the Supreme Court of Canada with respect to all remaining accused.

Mr. Renwick: It looks to me as though I am going to have to wait some considerable time, is that it, before I read Campbell Grant's report?

Mr. McLeod: The appeals in the Supreme Court of Canada are on one narrow point. It is my expectation that it should not take long for those appeals to be heard.

Mr. Renwick: Well, I will await the event.

My next question is on the vote generally. There was a little note in the press the other day that one of the men laid off at Inco, who was on unemployment insurance, had that cut off during the period that he had been called for jury duty.

I am asking whether or not you would be good enough to review that with your colleague in Ottawa at the Unemployment Insurance Commission. It seems to me, that with the level of

jury duty fees at this time, a workman laid off should certainly not be punished that way.

Hon. Mr. McMurtry: Could we perhaps get a photostat of that, Mr. Renwick?

Mr. Renwick: It was just a small squib in the paper. I think I have got it here. Here it is: "Unemployed Jurors Must Forfeit UIC." It was published in the Globe and Mail on September 11.

Hon. Mr. McMurtry: Yes, we will pursue that.

Mr. Renwick: I would be very interested to find out. That seems to be to be an unnecessary punishment.

Hon. Mr. McMurtry: It sounds to me like bureaucratic excess.

Mr. Renwick: Yes, particularly when you consider the rate you pay in Ontario. So I will not refer to it as bureaucratic.

The other case which I have been following for quite a long time is that of those worthless German bonds, the case against Stockdale and Fulcher. I see in the press that stay has been granted. Does that mean that is the end of that matter?

Mr. Takach: The minister has asked me to respond. Yes, in this particular case, it is. We encountered some difficulties in the retrial and it was just not possible to mount the same trial again, due to the death of a couple of witnesses and some reluctance on the part of one of the German witnesses to return to testify for the third time, I think.

Mr. Renwick: So the stay of the original conviction, after you ordered the new trial and now that the new trial is finished, is for all purposes permanent?

Mr. Takach: We do not intend to proceed with the trial.

Mr. Breithaupt: It was a guilty plea, was it not?

Mr. Takach: It was not a guilty plea, Mr. Breithaupt, it was a finding of guilty against one of the individuals during the original trial. He chose not to appeal his conviction and has since left Canada. That conviction, of course, will stand—

Mr. Breithaupt: Should he return.

Mr. Takach: —should he return, but that seems rather doubtful because he was not a Canadian citizen and had spent only a short time in Canada prior to his arrest.

Mr. Breithaupt: So that matter, again, is at a stage where there is no practical recompense and anyone who invested in those apparent securities has no hope of recovery.

Mr. Takach: Basically, yes, except that—

Mr. Breithaupt: They were used as collateral security—

Mr. Takach: They were, but the actual amount involved was very minimal. It pertained to one count only and it was an amount of, I think, \$25,000 in respect of one particular investor. The other count pertained to an attempt, and the individuals in that case did not part with any money. My memory does not serve me well with respect to that \$25,000. It may even be that there was some restitution and recovery in respect of that amount.

Mr. Renwick: The next item is the comment made by county court judge Patrick LeSage at the time when he sentenced James Alexander McWhirter, the former head of the Ku Klux Klan, in which where he indicated a couple of things.

Something of which I was not aware was that there had been a relatively recent amendment to the Criminal Code under which the charge was laid. In addition, he expressed the view that it was unfortunate that the maximum penalty was two years. He said, "I can think of very few crimes which would cry out for greater general deterrence to deter other like-minded persons."

I wonder whether the Attorney General shares my view and whether he is perhaps making representations that the penalty under the code should be increased for that type of offence, which involves the whole question of terrorism, which is a frightening aspect of our modern times.

Hon. Mr. McMurtry: Certainly we have been considering it. I think you are quite right, Mr. Renwick, that we should put it on the next attorneys general agenda with a view to recommending to the federal government that this be considered.

Mr. Renwick: My colleague the member for Lake Nipigon (Mr. Stokes) raised with me a matter of concern that had come to him from a number of his constituents. It was published in the Chronicle-Journal on Tuesday, November 3, and it was a most astounding report of the trial.

My question was whether or not the ministry would review the circumstances of the sentence in this case to determine whether an appeal should be taken against the sentence. For the

rape of one woman and the indecent assault upon and severe beating of another, Kelvin Wesley Ten-Have was sentenced to three years and two months in penitentiary.

The circumstances are quite frightening. Jack Stokes has had a number of people express real concern about this to him. In addition to that, there is a most amazing statement by defence counsel in there. The defence counsel is John Hornak, and he is reported to have said: "'As for the rape'—Hornak called it 'soft'—'we are not dealing with a virgin of tender years. This was a 32 year-old woman with a child. This wasn't a babysitter ravaged by a lascivious parent.'"

12:10 p.m.

That is an absolutely astounding statement for a defence counsel to make, particularly when the judge noted Ten-Have's callous behaviour when he terrorized the woman in her car before he raped her. "'He got what he wanted, said 'Bye, bye,' and then left her sitting in the car,' said the judge. 'He seems to have it in his mind that he is free to attack women whenever it suits him.'"

That is a quotation from the judge. I believe it was a very good judge, Judge Carruthers of the High Court.

I certainly support my colleague and would be glad to raise it with you with a view to looking at the appropriateness of the sentence. It is fair to say that it is very difficult to get to the bottom of the whole question of the sentences imposed on these serious violent cases of sexual assault, but this issue is commented on at least once a week in the Metropolitan press.

This happens to be in the Thunder Bay, but I would appreciate it if you could make a note to review the matter and perhaps write to the member for Lake Nipigon after you have had an opportunity to review it and decide what, if anything further, can be done about it.

Hon. Mr. McMurtry: Do you think we might photostat that too? I am not aware of the case or the date of the sentence.

Mr. Renwick: I would appreciate it if you could get it yourself because I don't want to disclose the correspondent who has written to the member for Lake Nipigon. I would just as soon not. It is in the Chronicle-Journal, Tuesday, November 30, 1982, page 15.

Hon. Mr. McMurtry: The judge used the word "callous" and I would use that word to describe the comments attributed to the defence counsel. It goes far beyond what I would consider to be the appropriate responsibility of a defence counsel in those circumstances.

I am not going to comment on this case until we know more about it, but I have expressed my concern before of the inadequacy of many sentences for serious assault. In many cases, I believe the courts are not imposing sufficiently severe sentences.

Many of them are appealed by our ministry, not with the rate of success that I would like to see.

Mr. Renwick: I would appreciate it if you would now let me know what amount is being paid, if it is being paid through your ministry, to Cecil Kirby.

Would you describe the payments as maintenance or support? Is there an amount in these estimates for that purpose? What amounts have been paid over the time he has been under the police protection as an informant for the crown?

Hon. Mr. McMurtry: They are not part of these estimates.

Mr. Renwick: Which estimates would they come under?

Hon. Mr. McMurtry: I forget how it is broken down. I am advised the amount being paid is shared equally by the Royal Canadian Mounted Police and the Ministry of the Solicitor General. We have called on the Treasury for certain extraordinary expenditures with respect to the administration of justice. It is Mr. McLeod's view that it would not be in the public interest to disclose the amount at this time.

Mr. Renwick: For whatever these records are worth, would you please make a note that when it is appropriate, I would like an accounting of the number of dollars paid to Cecil Kirby or his family for their support and maintenance and other expenses involved with his role as an informer, having been granted immunity from prosecution up to a particular date with respect to any offences he may have committed.

Hon. Mr. McMurtry: Again, we have said publicly before, the amount is limited to living expenses and an amount to assist him to pay the payments pursuant to the court order for the support of his estranged wife.

Mr. Chairman, I think it might be of interest to members of the committee if we give you the number of people who have been convicted as a result of Mr. Kirby's co-operation with the police. Three major trials have taken place of which I am aware, despite vigorous assaults by defence counsel on Mr. Kirby's credibility. That would be an issue, given his past history. The juries have given his evidence a great deal of credence.

I repeat what I said before. We will talk about the expenditure at the appropriate time. I do know that the results of his co-operation have been of major benefit to the public, not only of this province but of this country. It was a major breakthrough in the fight against organized crime. The results of his co-operation are very significant in contrast with the actual expense of maintaining Mr. Kirby.

Mr. Renwick: My next three or four comments are partly related to some specific matters, but I would also like a response from the minister.

I understand you are going to introduce a courts of justice act at some point. Have you any idea when that's likely to come into the assembly? The administration of the courts must be a continuing vexing problem for the ministry and I understand the bill is about ready to be introduced.

12:20 p.m.

Hon. Mr. McMurtry: It is certainly a bill I would like to see introduced in the near future, given the amount of time and effort that has gone into it. We are dealing with both the drafting of the rules and the legislation itself of the courts of justice act which have to dovetail. Because of the important role the judiciary has to play in relation to these roles, there has been intensive consultation with members of the judiciary and an active working committee headed up by two members of the Supreme Court together with practitioners. It has been a very complex process.

The late Walter Williston's report was an excellent one, but there is a good deal of the drafting yet to be done. When dealing with judges who are presiding and practitioners who have other responsibilities, it is difficult to get everyone together for the numbers of meetings and hundreds of hours that are required. That has prolonged the process. I had hoped we would be circulating something early this winter but I am not so sure that is not sort of a pious hope at present. Perhaps the Deputy Attorney General has a greater update than I have.

Mr. Breithaupt: You don't expect the bill to be introduced within the week so far as this session is concerned?

Hon. Mr. McMurtry: No. We are still hoping to introduce the bill during the spring. I had hoped we would have something by the end of the year but it has just been an impossible task. There has been great communication with the judiciary, particularly the chief justices who

have been very helpful in relieving their members of the judiciary from time to time in order to expedite the process.

We don't want to introduce legislation and rules that are going to cause problems for the judiciary and members of the profession. Given the amount of consultation and enormous amount of work that has taken place, we all would agree we want to do it right. This process has, unfortunately, gone long beyond the point I thought it would, but I understand why it was necessary.

Mr. Renwick: My concern is very simple. I think the Legislative Assembly has the capacity to deal with most everything, but I don't think we have the capacity to deal with that bill. I don't know what the forum should be. It is not an occasion for minor erudition about the review points of practice. I can't conceive that the standing committee on the administration of justice could deal with it.

We have problems with things like the Securities Act and we can cope with things like the Family Law Reform Act and so on, but when you come into this question—That's why I am very interested in hoping that somehow or other we will get some assistance in the standing committee on the administration of justice to help us to cope with the bill.

Mr. Breithaupt: This is a particularly good point because whether we have the particular personal knowledge or background to deal with that legislation or not, we are going to have to do it. There's no one else who can.

Perhaps if the bill receives second reading in the next session, there may be an opportunity at some point during the summer recess for this committee to meet for several weeks almost jointly with a representation of bench and bar who are going to be and have been involved. It may be that circumstance, if we do nothing more than have a joint week or two of balancing concern and discussion—to enable us to do our duty and approve that bill—almost on a conference level under the chairman's direction will help us to approach this peculiar kind of legislation, which will have an immense impact on the whole framework of the system for the next 20 years.

Mr. Renwick: I may be putting Mr. Stevenson, Mr. Brandt, Mr. Eves, Mr. Breithaupt, myself and the chairman down, but I think even we would have a little difficulty dealing with it. There must be some method other than a rubber stamp for it. I don't think it's worth the

committee's while to meet to deal with it, unless there is some method of having meaningful guidance about the bill for the committee.

Hon. Mr. McMurtry: A lot will depend on the reaction, public and professional, to the bill as introduced. If the public or members of the profession or, of course, the judiciary has particular areas of concern then that might guide the committee as to how it could most effectively utilize its time and energy.

Mr. Breithaupt: In reference to judges who are going to have to deal with this legislation, I don't think, at least in my experience, they have ever appeared before a committee to talk about their personal views as to how something may work.

It's going to be a very curious project to sort out when we would hope that the most senior people within the system would be able, and feel willing, to come and talk about these things in what effectively becomes a public forum, where they have not ordinarily appeared.

Hon. Mr. McMurtry: Yes. I don't think that's a precedent we should encourage, for this reason: within reason—and I don't think they're asking for anything unreasonable—we wish to give the judges sufficient time to examine the legislation. This is why the process has been extended; in order that we may achieve a result that will be satisfactory to the senior judiciary before it's introduced. That doesn't mean that any of us want to act as a rubber stamp. We think it is an area in which reasonable people can reach a consensus.

Mr. Renwick: I just want to point out to you, and perhaps to the chairman of the committee, that it's a real problem for us. Otherwise, we'll be going through a strange process, I would think. Mr. Treleaven may feel quite confident to deal with it.

Mr. Breithaupt: After Bill 179, I don't think anything will faze—

Mr. Chairman: No. Mr. Treleaven's competence was stretched with the national energy program of last summer coming in the corporate law area, so he certainly would be stretched way beyond his means with this one.

Mr. Renwick: The next question is one my colleague Mr. Martel had raised with the minister in the House. It is on work place safety violations and the difficulty of dealing with violations under the Occupational Health and Safety Act, having regard to the judgement of the Supreme Court in the Sault Ste. Marie case and the three classifications.

It is extremely important, and I think my colleague concurs, that the question of charges under the Criminal Code should be not simply set aside as though it did not apply to those cases. There must be occasions, without using any examples, when the degree of recklessness with respect to the absence of safety precautions on work sites is equivalent to the mens rea doctrine in the Criminal Code. That poses a real problem.

12:30 p.m.

The fact that the Occupational Health and Safety Act does not provide for absolute liability within the classification of the Sault Ste. Marie judgement, but is more in the nature of a strict liability test, makes it extremely difficult. That, coupled with the relationship between the seriousness of the consequences and the fines imposed, raises very serious concerns.

I would hope your ministry would be somewhat more concerned and interested to follow the course of those industrial accidents with a view to impressing upon employers the importance of safety requirements in the work place.

Hon. Mr. McMurtry: Yes, we have a working committee with the Ministry of Labour to develop new strategies, or consider new strategies, with respect to more effective prosecutions. Certainly as part of that we will not hesitate to prosecute under the Criminal Code where we feel we have reasonable and probable grounds for proceeding.

I hope that we have satisfied members of the Legislature that we do regard these as matters of great importance. I can certainly understand the concern that has been expressed by some of the members with what appears to be the inadequacy of some of the penalties.

Mr. Renwick: My next concern is the burden on the court calendars of criminal cases in the judicial districts of Durham, York and Peel. What is the status of the backlog of cases in those three judicial districts? The Chief Justice referred to it a year ago, as he had on previous occasions.

I understand there was some push to clear the docket in the judicial district of York, but there are certainly very clear indications that Durham and Peel are still in trouble, and I am quite certain that York is still clogged.

Hon. Mr. McMurtry: We had quite a successful blitz at the county court level this fall.

Mr. Renwick: I am speaking mainly of the county courts.

Hon. Mr. McMurtry: This is, of course, where a great deal of the problem occurs. In recent years, we have considerably expanded the provincial court in York. I think the number of judges sitting in Metropolitan Toronto has almost doubled during my tenure, as well as the number of courtrooms at the provincial court level. This is one area where we have been able to expand quite considerably, notwithstanding our ongoing resource problem.

The county court level has been the critical level and this blitz has been quite successful in reducing the case load to manageable proportions. But we believe that we require at least three more courtrooms to deal with criminal cases at our University Avenue courthouse, particularly at the county court level. We are looking at just where we might construct these courtrooms.

In Peel, we have opened some new courtrooms at the provincial court level—three new courtrooms, I think—and we are appointing two additional judges in the appeal area at the provincial court level. There was an additional county court judge appointed in Peel within the last year.

I am not sure that I can assist you particularly with respect to Durham.

Mr. Renwick: I understand there is a serious backlog in Durham.

Mr. Takach: I do not know whether I can provide any specific information. From our perspective and the crown attorney's perspective, the case load in Durham is significant. I could say it is one of the prime areas in which we are giving consideration to adding staff next March.

I have been liaising with the crown attorney in Durham. In fact, I met with him about a month and a half ago, when he gave me some statistics, which I verified and which we were already aware of, to indicate that the case load per man—that is not always the determining factor—so far as crown counsel was concerned was significantly high and, furthermore, there was a very large number of cases in the county court.

Of course, that is a significant problem in any jurisdiction when cases are being disposed of in county court rather than provincial court. In effect, it can double your case load. You do it once at the preliminary hearing stage in county court and then you do it all over again, but not to the same degree, in provincial court at the preliminary hearing stage. If, in fact, there is a jurisdiction, and I think Durham is one, where

everyone seems to be electing upstairs for some reason, that exacerbates the problem.

There is a heavy case load; I am aware of that. I don't know how long it would be before you had a trial in provincial court, criminal court or county court. We make an effort to expedite all custody cases, of course. I guess I can say it is a prime candidate for additional staff as far as the crown attorney's end of things is concerned and it is certainly under my scrutiny.

Mr. Renwick: The same problem occurs in Peel, as far as I am aware. I understand, if you take those three judicial districts, that accounts for the great bulk of the administration of justice in the criminal courts.

Mr. Takach: Yes, it does. Peel, I think, is well on the way to being in hand, as the Attorney General pointed out, with some additional judicial appointments.

In addition, we appointed an additional assistant crown attorney last spring. If we are able to do so, and I think we will be able to do so, this is an area where I expect we will appoint still a further assistant crown attorney who will account for the additional judicial appointments. Of course, unless you appoint crown counsel to go with the court, unless there is a crown counsel available to prosecute cases, you do not accomplish much by just having a judge.

Again, I think it is an area that is well administered. There is a large number of cases, no question about it, because a large number of people live within that jurisdiction.

Mr. Renwick: I understand, but that does not relieve the fact that delays are very extensive. I do not pretend to know the answer to it, but I had raised, for example, the Derrick Cole case and the Clifton Stewart case, the two persons who were incarcerated for long periods of time before they were actually tried by the court. In one case there was an acquittal, and in the other a new trial was granted and the case did not proceed.

I particularly raised it with the Attorney General because I deliberately did not state it in the House, but both men had come from the Caribbean. I am very much concerned about the inability of a number of people from the Caribbean who are picked up on charges of one kind or another to have the same access back to the streets while awaiting trial that many, many other people get.

I wonder whether, with the interest the Attorney General has in the racial discrimination area, that he wouldn't, in some way, look at the

question that those charged who have different racial origins, many of them recent newcomers to the country, have some opportunity to have an equal access to the street while awaiting trial.

12:40 p.m.

Hon. Mr. McMurtry: I think they do.

Mr. Renwick: It is an extremely difficult question, but those two cases would seem to me to be quite appalling in the length of time that those men were in prison; for Clifton Stewart it was 500 days, and that is a long time to be in prison.

Mr. Breithaupt: For what offence?

Mr. Renwick: Second degree murder. He was acquitted.

I am not raising any question about the legitimacy of the charges or the appropriateness of the charges, that isn't the question. Five hundred days is a long time to be incarcerated.

Hon. Mr. McMurtry: Is this the matter you raised in the Legislature?

Mr. Renwick: Yes, I raised the Clifton Stewart case and I, of course, raised the Derrick Cole case because I have watched the—

Hon. Mr. McMurtry: Yes, I recall the Derrick Cole case very well, but the Clifton Stewart case I honestly don't recall at this moment.

Mr. Renwick: I will be glad to let you have the correspondence I have on that particular case. It is that kind of specific example which raises very serious questions about something called equality before the law. I am not making any charges or suggestions of any kind, except that it requires someone to look at it.

Hon. Mr. McMurtry: Yes.

Mr. Renwick: The Clifton Stewart case was an extremely fascinating one. He was the one who wrote to the ministry, after he was released, to ask them if he could get any help in getting a job. Someone in the ministry wrote back and said there were no openings available at the present time.

He was obviously very well thought of because I know in this case two or three of the jurors continued to have an interest in this boy, continued to be of help to him and so on, and felt very warmly towards him. He was acquitted, as I say.

The other question which I raised in the House the other day is—and let me put this very baldly—I cannot conceive that the police investigation into Argosy did not make some comment about the role of the Ministry of Con-

sumer and Commercial Relations and the Ontario Securities Commission. The House may not be the appropriate place to respond to it, but I would like to find out about it. It is still extremely difficult for me to understand that, with all of the connections of the Argosy group with that ministry by way of licensing or registration of one kind or another, either with the ministry or with the Ontario Securities Commission, and I outlined them in the question I put to you in the House.

I am extremely concerned, if the OPP investigation did not direct itself towards that problem, that some other investigation be made into the role of the ministry and of the Ontario Securities Commission in the Argosy collapse. If the police investigation did direct itself towards those kinds of questions, I would like to know what they found, what their comments were, what their views were.

Among the group of companies you had the registration of a mortgage broker. You had one of the companies issuing a document which was certainly an investment contract without ever having been registered. You had another one of the companies registered as a security issuer. You had the Ontario Securities Commission accepting a prospectus as late as October 1979 for, I think, \$3 million of unsecured debentures. All of this occurred within the focus of the time when Argosy was in extreme financial difficulty.

Naturally, the cases before the criminal courts will go forward, but there must be some kind of a report made somewhere about the role of the ministry and of the securities commission in that Argosy financial collapse.

Hon. Mr. McMurtry: I am advised that these issues were certainly covered by the police investigation. I would imagine that in the normal course of events a good deal of this will be part of the evidence that will be heard at the trial.

At this point, however, I haven't had a formal reply from my advisers in relation to your question. Obviously, however, given the ongoing prosecution, it might be very difficult to get involved in any discussion of some of these issues without undermining the integrity of the criminal process. It is being looked at the present time, however.

Mr. Renwick: A year ago, I raised the Praxis matter and the Bookbinder matter that is still now before the Supreme Court. I assume that the lawyer for Howard Bookbinder still will not

receive a response until the Supreme Court deals with that matter. Is that right?

Hon. Mr. McMurtry: That is my recollection of it.

Mr. Renwick: My understanding was that at the time of the second stay of proceedings, Mr. Copeland, the counsel for Mr. Bookbinder, wrote to Mr. McLeod with respect to the question of charges on the comment made by the McDonald commission on the RCMP that the matter should again be investigated with respect to the possession of stolen property by the RCMP for some seven years.

The response at that time was that, when the matter is dealt with, the ministry would respond to that letter. I understand that the matter is probably not going to be argued in the Supreme Court until early next year.

Hon. Mr. McMurtry: Yes, we had better check on our correspondence, because Mr. McLeod has some recollection of responding to Mr. Copeland in some detail.

Mr. Renwick: I have tried to follow the Praxis matter, now that Margaret Campbell is no longer in the assembly to try to keep track of it. My understanding is that there is on the record a letter sent to the ministry, and I believe to Mr. McLeod, shortly after Mr. McLeod appeared and asked for the second stay, to which the response was made that would be acknowledged when the matter of the appeal had been dealt with.

If there is a problem about it, however, I will get a copy of that letter and let you have it.

Hon. Mr. McMurtry: We'll check on that.

Mr. Renwick: Is this too bald a statement to make: that regardless of what the McDonald commission had to say, there has not been a single charge laid in Ontario against any police officer of the RCMP or any other force, with respect to all of the matters touching upon the province that were disclosed in the McDonald commission?

Hon. Mr. McMurtry: I don't recall the McDonald commission expressing an opinion to the effect that offences had been committed in Ontario.

Mr. Renwick: They indicated they should be investigated.

Hon. Mr. McMurtry: I think, however, they simply indicated matters that should be reviewed. There was no statement, and correct me if my recollection is faulty, that the commissioners were of the view that offences had been com-

mitted in Ontario. These matters were all carefully reviewed and—

Mr. Renwick: I don't pretend to be an expert on the McDonald commission—I would if I had the time, I guess, because it is quite fascinating—but, for example, under Checkmate nothing has taken place, as I understand it. Do you anticipate any charges ever being laid about any events which occurred in Ontario that were disclosed through the McDonald commission?

12:50 p.m.

Hon. Mr. McMurtry: I may be mistaken, and I am just trying to recall, but my recollection is that I did say in the Legislature that these matters had been carefully reviewed and it was the view of our law officers that there were not reasonable and probable grounds to proceed with any criminal charges in relation to these matters that had been referred to in the McDonald inquiry. I thought I had made a statement to that effect in the Legislature, but I really don't—

Mr. Renwick: I certainly don't recall any. I recall your making a statement with respect to the Metro police investigation, and then the subsequent Ontario Provincial Police investigation with respect to the Praxis matter. I recall those statements because it was one of them that Mr. McLeod read into the court at the time when the stay of proceedings was filed.

Under Operation Checkmate, however, and a number of the other instances where the incidents took place in Ontario, it is difficult to believe there was not a basis for laying a single charge in Ontario, particularly on Operation Checkmate.

Mr. McLeod: First of all, Mr. Renwick, it is my recollection that the so-called Operation Checkmate was the prime area where the McDonald commission suggested that the Attorney General of Ontario should review the findings of the commission and any other evidence available to determine—in fact we had caused the OPP to become involved in an investigation of those fact situations before the McDonald commission report was out, on the basis of information provided to us by McDonald commission staff.

In addition to the Praxis matter to which you have already referred, there were two attempts by private citizens to cause criminal charges to proceed in relation to one of the Checkmate cases.

In the first instance, a privately laid information alleging forgery and uttering in relation to

an incident was stayed on the direction of the Attorney General, on the basis of the fact that an extensive OPP investigation had revealed that it was not appropriate for that matter to proceed in the criminal courts, first, because of the fact that no offence was disclosed; second, because of the proper application of the principles of prosecutorial discretion.

A second attempt was made on the very same fact situation involving charges of extortion. Again, for the same reasons, a stay of proceedings was entered.

With respect to the remaining eight or nine Checkmate matters, the OPP investigated them, with the assistance of crown counsel in course of that investigation. Of all of those, the one that really was the closest to justifying the laying of a charge was a matter involving a federal statute, and that matter of course was referred back to the federal Department of Justice because it is their jurisdiction.

I don't really have any hesitation in saying—

Mr. Renwick: Would you take this as a request on my part for a statement or a response on two grounds: first, whether or not there was evidence to support the laying of charges; and, second, on those instances in which prosecutorial discretion was exercised and the charges were not laid, under all of the matters that were commented upon or were within your purview as a result of your own investigations or the comments of the McDonald commissioners?

Mr. McLeod: With the possible exception of the one we referred back to the federal Department of Justice, and on which it is really not our jurisdiction to comment, all of the others were cases in respect of which there simply was no evidence to proceed.

Mr. Renwick: I only have two other brief matters. I may have missed it, but are you up to date in issuing your report about wire taps?

Mr. McLeod: I think so.

Mr. Renwick: I don't think I've received the last one. I would appreciate getting a copy of it. I usually get one at some point.

Mr. McLeod: I'll check on that.

Mr. Renwick: But as far as you know, you've met the time requirement. Prosecutorial discretion intrigues me continuously. This particular one—Crown attorney, Peter DeJulio said that the charges would be withdrawn against Lily Chiro in provincial court last Friday, December 10.

The charges were distributing obscene mate-

rial in connection with a controversial film, *Not A Love Story*. Lily Chiro was charged in January after police seized invitations to a private screening of the National Film Board film at the Cameron Public House on Queen Street West.

I'm glad you did exercise your prosecutorial discretion in that case. I'm very curious about how you exercised the discretion. Would that be a matter that would have been referred, sir, to you?

Hon. Mr. McMurtry: Not to me, no.

Mr. Renwick: To the ministry itself as distinct from the crown attorney in his capacity at the judicial district?

Hon. Mr. McMurtry: I assume that it was made by him in his capacity as an agent of the Attorney General in his particular district. These decisions must be made on a regular basis by our professional people without necessarily referring it to 18 King Street East.

Mr. Renwick: It's really quite amazing. Apparently, Ms. Giro designed the invitation flyer that was distributed to advise people that the National Film Board film would be shown. She was then charged with distributing obscene material and 11 or 12 months later the charges are withdrawn. It seems odd that a matter could drag on that long if the crown was ultimately going to absolve the charges.

Hon. Mr. McMurtry: It would be interesting and perhaps we could find out as to just what happened. Assuming the charge was laid without consultation with the crown—I'm guessing and perhaps that is hazardous at the best of times—what I would be interested in knowing is how many appearances there may have been between the first appearance and the withdrawal.

Mr. Renwick: I would be interested in the course of that case.

Hon. Mr. McMurtry: Yes, I would also.

Mr. Renwick: I emphasize that it sounds to me like an appropriate case for that discretion, but I find it extremely difficult that a person would be subject to charge for 11 months, unless there is some reasonable explanation for it.

Hon. Mr. McMurtry: I'd be interested in the answer to that also.

Mr. Renwick: One further question. The environmental people are continually interested in the class actions. I think it is appropriate here in the administration of the course of class actions legislation and the question standing. They have been in communication with you,

and I was requested to raise the matter with you, and get a comment from you about those two matters.

Mr. Breithaupt: I'm also interested in that particular point. Recalling the statement which the Attorney General made on the report on class actions which the Ontario Law Reform Commission prepared and which we obtained on June 24, now we are six months along and I was also interested to see what developments we might expect from that event.

Hon. Mr. McMurtry: As you know, the report of the Ontario Law Reform Commission is the most comprehensive report on class actions that has been done in any jurisdiction. There's a great deal of interest, I'm proud to say, throughout the Commonwealth and the United States and elsewhere with respect to this five-volume report on class actions. We are still waiting for the report on the law outstanding.

Mr. Renwick: It's been outstanding a long time. You've been waiting a long time.

Hon. Mr. McMurtry: Yes.

Mr. Renwick: I didn't mean—it was quite unconscious.

Hon. Mr. McMurtry: Given the work load we've handed to the Ontario Law Reform Commission—and certainly the class actions project was a particularly heavy, onerous undertaking. I think the final result demonstrates the importance of taking the time and the effort that was taken by the commission.

There is a great deal of interest in the class actions report. I indicated at the time I tabled the report that we would allow the profession and the public in general sufficient time to respond.

I've had a number of preliminary inquiries about the timetable. There are a number of groups that are presently working on responses, particularly in industry, as one might expect. It has provoked a great deal of interest in industry because of the implications so far as class actions are concerned. I'll try to find out for you what the timetable is with respect to the law outstanding.

There is some very important interrelation. I may have some more information tomorrow.

Mr. Chairman, I understand we have about two hours left in the estimates?

Mr. Chairman: Yes, at one o'clock we had two hours left. That's correct.

Hon. Mr. McMurtry: I have a slight problem tomorrow. It normally should not interfere with

the estimates process. My ministry people arranged our Christmas reception, a coffee and tea reception, for all the staff of the Ministry of the Attorney General, unfortunately, for tomorrow afternoon. It's a matter of having an opportunity of seeing a large number of people one hardly sees between one Christmas reception and another.

Mr. Renwick: Friday morning is fine with me.

Hon. Mr. McMurtry: I was wondering how everyone else's schedule was, because I would like to take in as much of that reception simply to say thank you once again to the large number of men and women who work hard for us all and who I just don't see from one end of the year to another.

Mr. Breithaupt: Mr. Chairman, I am quite prepared to accommodate the Attorney General and his senior staff for tomorrow afternoon.

Mr. Chairman: As we have two hours left, and we cannot get more than an hour and a half on Friday, is it not possible to get at least half an hour or three quarters or an hour tomorrow so it can be completed this week?

Mr. Breithaupt: That would be possible. That would be just fine. I would expect we could begin about 3:30 p.m. If we begin promptly, I would suggest we spend an hour on item 6 dealing with the courts administration. I'm sure there is a number of things to be dealt with. Then Friday we would have the final hour on item 7 with the variety of boards and commissions. If we could do an hour tomorrow, that would be just great.

Hon. Mr. McMurtry: Yes, I think that would be fair.

Mr. Renwick: I may have one or two things tomorrow on the courts administration if it can be worked in. The one and only thing I intend to ask you to discuss under the tribunals is the assessment review tribunal. I am very much concerned about that whole process.

I'm not talking about the role of the Ministry of Revenue. I am talking about the process within those tribunals which I think should be looked at. I would like to spend a little bit of time on Friday on that matter.

Mr. Breithaupt: I am quite content if you wish to spend the hour on that particular theme. We can't go into all of the operations, but if there is one that is worthy of a somewhat higher profile even within the brief time—

Mr. Renwick: I thought I should comment so you would recognize that area is of concern. The others can wait another year.

Item 1 agreed to.

Items 2 and 3 agreed to.

Vote 1404 agreed to.

Mr. Chairman: We'll deal with vote 1406 tomorrow following routine proceedings.

Mr. Stevenson: Judging from the comments of Mr. Renwick and Mr. Breithaupt, I wondered whether they feel they need the full two hours?

Mr. Renwick: Yes.

Mr. Chairman: One more thing, I am hearing a beep of some kind, a very small beep. Hansard tells me it's not their machine. Does someone have a watch that makes that noise? All right. It isn't any recording device? Thank you.

The committee adjourned at 1:06 p.m.

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Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice

Estimates, Ministry of the Attorney General



Second Session, Thirty-Second Parliament

Thursday, December 16, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 16, 1982

The committee met at 3:27 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

On vote 1406, courts administration program:

Mr. Chairman: Gentlemen, we have a quorum. We have one hour and 55 minutes left.

Mr. Roy: Mr. Chairman, I want to deal with just a couple of matters, if I may, involving the courts administration program.

The one matter which is of concern is the issue we raised this afternoon on the decision of Judge Sharpe, in *Regina versus Valente*. Maybe we could hear the Attorney General's comments. I thought there was a report submitted to the Attorney General's department suggesting that a more independent system be created for the provincial court judges.

Under the present system, as I understand it, they are considered to be civil servants. I thought there was a report that had been submitted—

Hon. Mr. McMurtry: I would like to interject, right at this moment, that no one in this government considers the judges of this province civil servants. I want to clear up the misapprehension the member for Ottawa East may have.

Mr. Roy: The concern of the provincial judges is that the Attorney General and his people may not consider the provincial court judges civil servants. They claim the evidence indicates they are being treated as civil servants. They are talking about their level of remuneration, their pension, all the other services, and the curtailment of and controls on their activity.

Was there not a report submitted from some source indicating that a different sort of approach should be taken towards provincial court judges? That's my first question for the Attorney General.

Hon. Mr. McMurtry: There are a number of reports and papers in which the issue of administration in the courts has been discussed over the years. Is there any particular report of the dozens that have been prepared that is of interest to you, Mr. Roy?

3:30 p.m.

Mr. Roy: Unfortunately, I did not get copies of these reports.

Hon. Mr. McMurtry: There have been dozens of them over many years. I don't know what to—

Mr. Roy: I thought there had been recommendations made from a variety of sources indicating that the approach towards the treatment and the administration of provincial court judges should be somewhat different to what is existing now. What is going on here in relation to the decision by Judge Sharpe is maybe out of a sense of frustration.

I would not like to think that any challenge to the Constitution or some section of the new Charter of Rights was based on frustration towards the administration of justice, but some of us have had complaints in the past about the way the provincial court judges feel. They do not have the independence or the status of independence their colleagues have in the—

Hon. Mr. McMurtry: Have you ever raised this in the Legislature in the last seven years?

Interjection.

Mr. Roy: I probably have raised the issue over—

Mr. Chairman: Order. The committee is the place where you can ask repeated questions which you cannot ask in the Legislature. It is a fair enough question that Mr. Roy is putting up.

Hon. Mr. McMurtry: I forget what the question is.

Mr. Roy: My question again to the Attorney General is whether he can tell us if there are any steps to deal with the provincial court judges which are different from the present setup.

Hon. Mr. McMurtry: I think the present setup is eminently fair, Mr. Roy. I think very significant steps have been taken over the years to enhance the independence of the judiciary, which we recognize as a cornerstone of a free society. This independence has always been given a very high priority.

If you are objecting to the fact that government takes a responsibility for setting the level of compensation and pension benefits, then I would be quite prepared to deal with your

objections. It has occurred to me that this is part of the process of responsible government, accountability for the expenditure of taxpayers' funds.

Earlier in my estimates—I believe you were not here—I outlined in some considerable detail the care with which we go about making the judiciary appointments. We do not make an appointment unless the appointment has been recommended by the Ontario Judicial Council, which is quite independent of government.

With respect to the removal of judges, that process is also very much in the hands of the Ontario Judicial Council. It is a process quite independent of government. I think you are aware of the steps that must be taken if a judge is to be removed. They are all dedicated to maintaining the independence of the judiciary.

We have gone further than the federal government on the matter of compensation. We moved ahead of the federal government and ahead of any other province in establishing a compensation committee, I forget the precise name, which makes recommendations to the government on judicial compensation, pension and other financial benefits.

This committee was established about three years ago. It was made up of a representative of the government, which has been the Deputy Chairman of Management Board and a representative of the judges. The first representative was Mr. Arthur Maloney, and he was replaced a few months ago by Mr. Edward Greenspan.

The chairman of the committee is a person who is agreed upon by both parties. The chairman is now Mr. Alan Marchment, the chairman of Guaranty Trust.

They make recommendations to the government. The federal legislation, as I understand it, establishes a committee, all of whom are appointees of the federal Ministry of Justice.

We think we have made every reasonable effort to maintain the independence of the judiciary. It is true that some of their pension benefits and long-term sickness benefits and so on are part of the civil service umbrella, but we think that works to their advantage. I will read the judgement of Judge Sharpe, which I have just had handed to me.

Mr. Breithaupt: I understand it is some 15 pages. It should be a very interesting document to see.

Hon. Mr. McMurtry: Yes, 16½ pages.

Mr. Roy: My colleague, Mr. Breithaupt, and I were discussing this matter earlier. Are the

justices of the peace being challenged as well; the justices of the peace who are dealing or adjudicating—

Hon. Mr. McMurtry: In this judgement?

Mr. Roy: Yes. Is that part of the challenge as well?

Hon. Mr. McMurtry: Not to my knowledge, but I have not read the judgement.

Mr. Roy: I do not know whether you would consider one other factor. You can understand that is quite a serious situation. It involves a good number of provincial judges and if it also involves the justices of the peace, it can have some impact on the administration of justice in this province.

To get this matter cleared up as early as possible, I wonder if you would consider referring this under our statute, the Constitutional Questions Act, and having it referred right to the Court of Appeal to make a decision on it. Would that not be the most expeditious way to deal with this question?

Hon. Mr. McMurtry: I am interested in the most expeditious process. We will consider that.

Mr. Breithaupt: Just refresh me on the mechanics. I understand this would now be appealed to a single Supreme Court judge. Is that the—

Hon. Mr. McMurtry: I think so.

Mr. Roy: It is a single judge of the Supreme Court, is it not? I would have thought it would be more expeditious to just refer that matter under section 1 of the Constitutional Questions Act and immediately direct it to the Court of Appeal.

Due to the importance of this and the people involved, I would have thought that would be one of the questions which should be taken up by the Court of Appeal as soon as possible.

Hon. Mr. McMurtry: It could turn out to be a much more lengthy process doing it that way. I do not know whether that is necessary or not. It is important that this matter be considered by a higher court as soon as possible.

Mr. Roy: On another matter, Mr. Chairman, I wanted—

Mr. Renwick: Mr. Chairman, just before Mr. Roy moves on, would it be possible for us to receive a copy of the decision?

Hon. Mr. McMurtry: We could get it photocopied.

Mr. Chairman: The clerk, on my instructions, is in the House finding out what bills were passed today so we will know what our plans are

for the next three or four days before we break today. We will have it photocopied as soon as he returns.

Mr. Renwick: My other comment is very simple. I assume you will be getting lots of advice on how to have this matter decided expeditiously. I think it is a constitutional matter and that the Constitutional Questions Act is the quickest and most expeditious way of dealing with it rather than face a single judge with the question.

Hon. Mr. McMurtry: We certainly can say that is the appropriate way.

3:40 p.m.

Mr. Renwick: You know that better than I do, but you may recall that over time there has been a considerable amount of concern amongst the provincial court judges with respect to financial matters, not with respect to their status as judges or the appointment and removal processes.

I certainly have never heard any members of the bar take the position that the judges were not judges, and were not independent in that sense. However, there has been serious concern amongst the provincial court judges about financial matters, particularly about pension matters and the appearance of a relationship with the same criteria that generally applied to the civil service.

I know, because you have responded to questions that I have put on a couple of occasions about those arrangements, and I understand from brief discussions I have had with some of the judges that basically the Premier (Mr. Davis) himself has dealt in a significant way with your advice and assistance with some of those financial concerns.

However, I can only read your statement and the brief, reading between the lines. Judge Sharpe obviously seems to think that those considerations in some way affect his sense of his status as a judge.

Mr. Roy: To deal with provincial offences, I take it. That is where he sees the lack of independence. I take it that it does not concern any decisions under the Criminal Code, but rather under the Provincial Offences Act.

Mr. Renwick: I do not know what he is talking about. It may well be that this is the case.

Hon. Mr. McMurtry: We have been looking at pension arrangements for the judges and we would like to enhance them. At the same time, as far as their salary is concerned, I joined the government at the time the restraint program commenced. The provincial court salaries have

advanced at a much greater rate than any other salaries paid out of the consolidated revenue fund.

In 1973, the judges' salaries were \$27,850. Today they are \$65,700; that is in 1982. I think those figures indicate they have been advanced at a higher rate than those of any other group paid from that particular source.

Mr. Renwick: But is there no separate statute governing their superannuation arrangements?

Hon. Mr. McMurtry: No, and to bring them under another statute, so far as superannuation and what not goes, would be a very expensive process. When you're talking about funding such an arrangement, it is my view that, given the practical realities of the judges, no government would probably be able to afford to do as much as they would want to if you set up a separate pension scheme.

I think there are certain obvious benefits accruing to the judges taking advantage of that umbrella arrangement, and the fact that they come under that particular umbrella, of course, should in no way interfere with their independence.

Mr. Roy: Mr. Chairman, I would like to get on to another topic which I am sure is of great interest to the Attorney General. If it will make you feel much better, I have raised this issue on a number of occasions before, even prior to the time that you were Attorney General in this province.

It has to do with a very excellent brief put forward by the Carleton County Law Association, dealing with the fusion of the county and Supreme Courts and the regionalization of these courts.

Mr. Chairman, you will know that there are still county and district court levels in Ontario. There are some 140 or so county and district court judges, and some 50 Supreme Court judges.

On different occasions I have discussed this with the Attorney General and both of us felt it was very difficult to get public or even law associations involved in this. It always seemed to me and to many of my colleagues that the distinction was an anachronism, that it was not necessary in the 1970s and 1980s, at the time when we were first raising the issue.

The Carleton County Law Association, along with other county associations, have dealt with it very fairly. They have put forward a very interesting and forthright brief on this whole issue.

As they point out, 19 of the county associations—I think there are, what, 21 county law associations in this province?—have voted in favour of what we call the fusion of the Supreme Court system: having only one Supreme Court in Ontario and then regionalizing the Supreme Court in the eight districts across Ontario. The districts are outlined in the brief put forward by the association. They would be Windsor, London, Hamilton, Toronto, Kingston, Ottawa, Thunder Bay and Sudbury.

I would just like to get from the Attorney General his views on this proposal. As you know, Mr. Chairman, this proposal was suggested by the Carleton bar. It presently exists in Quebec and a number of other provinces. In fact, some of the other provinces are presently moving towards the fusion of the two courts.

As one who has had some limited experience in these courts—on a part-time basis, of course—I've always felt from the first day in practice that the distinction has no relevance for the 1980s and the 1970s. There have been changes to the Criminal Code. There are very few offences now that can't be dealt with by the county bench.

In other words, the association puts out in a very organized fashion the reasons why the changes or distinctions between the two benches should have no relevance to Ontario in 1982. I would like to have the Attorney General's response to that brief.

We've had some interesting experience, in fact, in the last while in Ottawa. Chief Justice Evans has come down to Ottawa on a number of occasions lately to slap the wrists of the local bar because they were slow, unorganized, not getting their cases on, and so forth. We've had the interesting experience of the president of the Carleton county bar, along with others, responding to the Chief Justice.

It is an interesting process: you have headlines with the Chief Justice saying this and that about the bar, and then the bar responding: "Well, I think he was wrong here. I think we are organized. We were prepared to co-operate," and so on.

In any event, there has been an initiative taken by the Carleton County Law Association. They now seem to have the support of all the associations, or at least most associations, across Ontario.

Mr. Chairman, this is an idea whose time has come for Ontario. I know there is some objection, especially around Toronto and by the majority of the Supreme Court judges. Howev-

er, I would like to hear the Attorney General's views on whether he is prepared to consider the views of most of the members of the county associations who are in support of this idea.

3:50 p.m.

Hon. Mr. McMurtry: I think that most of the views in the Carleton county brief were reflected in the Ontario Law Reform Commission minority report back in 1972, so this is an issue that has been quite thoroughly canvassed. It is an issue that has been discussed quite frequently by myself and the County Court Judges' Association.

Of course, we have had discussion with the senior judiciary in the Supreme Court. There are very differing views amongst the county court judiciary in relation to a merger. I cannot be precise, but one could say that, in general terms, the court seems to be pretty much split down the middle on this issue.

Mr. Roy: Even the county court?

Hon. Mr. McMurtry: Yes, the county court, that is correct. The county court judges are interested in expanding their jurisdiction in certain areas, at least on a concurrent jurisdiction basis. We have more than some degree of sympathy for some of the issues they raise. I don't think "sympathy" is the right word. I think "some understanding" is better.

As a result of these discussions, there is now a committee of county and Supreme Court judges dealing with issues of jurisdiction. They are not dealing with the issue of merger, but they are dealing with issues of jurisdiction which are really related to the goal of increasing the county court jurisdiction.

They have not made any recommendations to us, but it appeared to me, right from the moment that I was first apprised of this issue as the Attorney General, that this was an issue I wanted to see dealt with as much as possible by the judiciary themselves. It seemed to me that it would not be in the public interest to create the impression—even if it is the wrong impression—that there is some sort of major dispute between the two orders of court in relation to matters of jurisdiction. I think the committee of county and Supreme Court judges are addressing the issue of jurisdiction, from what I hear, in a very positive light.

I think that what is fundamental to all of these considerations is the recognition that, despite the challenges our court system faces on a day to day basis, the present court structure has served the people of this province very well.

While we will continue to adjust matters of

jurisdiction, particularly when it comes to monetary jurisdiction, the system, and the accessibility of the individual citizen to the system, has worked out quite well within the existing context.

That is not to suggest that county court judges are incapable of dealing with very serious issues on a day to day basis. I think that each court, given the nature of the court with its local jurisdiction, has worked quite well. The combination of having a very first-class bench, which is a fair description of the county court bench, dealing with matters on a day to day basis locally, coupled with the assizes of the Supreme Court, provides a mix of judicial service that has generally been well supported by the profession.

I think you are quite right, Mr. Roy, when you say the county and district law associations have not been very interested in the issue of merger. It has been my impression that the great majority of county and district associations prefer the existing system with some modest modification. The issue of monetary jurisdiction will continue to be adjusted from time to time. If your question is directed to whether the merger of the two courts is something we are seriously considering at present, I would have to say no.

Mr. Roy: You are quite right, but unfortunately I would have thought the local association should have had more enthusiasm and should have taken more initiative. Apparently, they are now. The word seems to be, at least from my colleagues at the Carleton County Law Association, that they have the support of all the other associations in Ontario except one or two. I am not sure whether Toronto is opposed to it.

Hon. Mr. McMurtry: I have not heard that. I should just go back a step and repeat that this was studied by the Ontario Law Reform Commission. Although there was a dissenting report, the law reform commission did not recommend merger. I do not know what support this proposal has from the other associations.

I do not expect this issue will go away or fade into the woodwork. My door is always open to the representatives of any county or district law association if they have some wisdom to impart to me and my colleagues in the ministry. We are always prepared to listen and perhaps learn.

I am not suggesting the issue is closed, but I am just being very frank in telling you that we are not considering that direction. As I recall my recent meetings with the County Court Judges' Association, it is not an issue they are pressing at present either.

Mr. Roy: I can tell you that the priority of the

Carleton county bar, which has become far more active in the last few years, has been for a courthouse. We have taken it for granted that it is proceeding.

Hon. Mr. McMurtry: I think that is proceeding. I can understand that with the association's enormous success in achieving a new courthouse, they are now prepared to look for more mountains to scale.

Mr. Roy: The executive of the Carleton County Law Association, especially in the last few years, have been very enlightened. They have had educational programs and so on and they have been, by and large, as your officials know, pretty aggressive, enthusiastic, and not a bad bunch of guys and girls in putting forward their views.

4 p.m.

They feel they are not well served and that their clients are not well served by the present process. They feel it is not as efficient as it could be. Very often you have to wait for the Supreme Court judge to fly in before you can pick your jury. If the weather conditions are not right, the thing is delayed.

Sometimes they cannot get a case on because it might be too lengthy and the Supreme Court judge will have to leave that Friday afternoon a bit earlier and so on, and he will not be back. If they start into that case, they are going to have to come down to Toronto to finish it or if they want something that is expedient during the summer months when the Supreme Court is not down, they have to come to Toronto.

For all of these reasons they feel the present process is not serving the outlying areas as adequately as Toronto. That is their concern. I think they are going to continue pushing the issue and I think what they are proposing is an idea whose time has come. The system will not continue as it is now for many more years.

I think it is not only a matter of giving additional jurisdiction to the county court. I think you should do what Alberta has done. They have just given concurrent jurisdiction to their county bench and over a short time, there was a fusion of the county and Supreme Court bench.

Hon. Mr. McMurtry: It is interesting what you said about Alberta. My recollection is that they had a complete merger out there.

Mr. Roy: My understanding was that before the merger they passed a provincial statute giving the provincial courts and Supreme Court

concurrent jurisdiction, and then it was a matter of five years for a complete merger.

Hon. Mr. McMurtry: Do not misunderstand me. I have attempted to be frank with you on my views, but I do not want you to think I am in any way inhibiting discussion of this matter. Quite the contrary.

As you know, through the bench and bar committee chaired by the Chief Justice of Ontario, this is an opportunity for the bar associations represented on the committee to pursue this discussion. If the bench and bar committee presided over by the Chief Justice of Ontario were to come to us with a more or less unanimous recommendation, we would treat it very seriously.

The issue of merger has been discussed in recent years by this bench and bar committee with broad lawyer representation from about the province and they have not demonstrated much interest in the issue. That is not to suggest that with the activists presently involved in the Carleton County Law Association this issue will not continue to be discussed. I think that is healthy.

Mr. Renwick: I really just have one matter. There are lots of things that one can deal with generally about the administration of the courts, but I only have one matter which is bothering me today. That is the ambit and the extent of the search warrants on the police investigation of the Litton Systems bombing on October 14. I have two particular matters which are of concern to me.

So far as I can gather—what I know I read in the newspapers—there have been five search warrants issued. The first one was executed on World Emergency Project in Peterborough last week, on December 8. The second one was around noon on Tuesday of this week against the Cruise Missile Conversion Project, at Bathurst Street United Church. The third one is at the home of Kenneth Hancock, on Dewson Street. Immediately following that, was the fourth one on the Alliance for Nonviolent Action, whose offices, I believe, are also at the Bathurst Street United Church. The fifth one was at night at the home of a Rosemary Cook, who lives in the riding of Riverdale.

I have two or three concerns about them and, as Mr. McLeod told me yesterday, I'm not necessarily as familiar as I should be with the processes your ministry follows on these matters. I had always thought that once a search warrant was executed, the information on the basis of which the search warrant was obtained

then became a matter of public record. I thought it was readily available so one could ascertain what the information laid before the justice of the peace was.

I understand all five of the search warrants in this case were issued by justice of the peace Kashuba at the East Mall in Etobicoke. I thought the information was then a matter of public record, that people could see the basis on which the police discharged their onus of establishing reasonable and probable grounds with respect to the need for a warrant to substantiate the alleged offence.

I recognize that three of the five warrants were executed only yesterday. To my knowledge it is not possible to get a copy of those informations.

The usual, relatively slow process for these matters is not necessarily of concern. As I understand it, the justice of the peace in the judicial district is to forward them to the old city hall. If one goes to the records office where justice of the peace Kashuba presides you can usually get those informations.

As I understand it that process not only isn't taking place, but, more seriously, it is the intention to deny the availability to the public of the information on which those warrants were obtained. It will not be possible to get that information.

Again, I say that matters of the judicial process in all of its aspects throw up from time to time matters that may have some ingredient in them that I don't understand. I had always understood as a matter of principle that once the warrant was executed, the information was public information and one should be able to go and look at it.

The second point which concerns me is that justice of the peace Kashuba has not been available in his office since December 10 and he's on extended leave now until February. I would be anxious to make certain the process of information and issuance of those search warrants was scrupulously adhered to in these circumstances. It is a matter of immense public interest and public concern because of the seriousness of the matter under investigation on the one hand, and also because of the part being played by a number of organizations deeply concerned about the whole question of the liberation of nuclear weapons of one kind or another.

Those are two of my concerns. Third, I've had an opportunity to look at the Peterborough Examiner reports last week, and I cannot under-

stand from reading the press reports, which appear to be very accurate accounts, why it was necessary for the police from Toronto to bring Mr. Le Couvie, if that's the correct pronunciation of his name, back to Toronto for the interrogation. Again, there may have been some valid reason, but—let me see if I can get his exact name—Ivan Le Couvie on Tuesday night was brought to Toronto, held for 13 hours and then released in Toronto. I would have assumed the importance of the matter balanced against the rights of the citizen, and that he should have been questioned in Peterborough unless there was some extremely valid reason for that interrogation.

4:10 p.m.

I don't have any special knowledge of what took place between the time he was detained or arrested—arrested in Peterborough, I believe, and brought to Toronto until his release. I don't know what the course of the events were, and I know he has legal counsel, as I understand others have legal counsel.

I have, basically, three questions: Was the process strictly and scrupulously adhered to with respect to issuing the search warrant? Second, will the information on which the search warrant was issued be made available, or is it the crown's position that those are in some way going to be denied public scrutiny? Third, in the exercise of that search warrant in Peterborough last week and in connection with not just the search warrant but the detention and arrest of Mr. Le Couvie, was it essential to bring him back to Toronto for the purposes of lengthy interrogation before he was released?

It would appear to me that this was the appropriate vote since we were dealing with the provincial courts, criminal division under item 5.1 of vote 1406.

Perhaps the other matter which is of basic concern to me is, who advises the police with respect to issuing the search warrants? I would like to know who is doing that.

Mr. Chairman: Gentlemen, before you carry on much further, I am taking the prerogative of the chair and doing some apportioning here. We only have about 16 or 17 minutes left. Mr. Miller has a question, Mr. Breithaupt has a question.

Mr. Renwick: I am finished.

Mr. Chairman: Perhaps the Attorney General could make his answer fairly brief and let these other members speak.

Hon. Mr. McMurtry: I'm probably not going

to be able to make it fairly brief. There are three questions.

As far as search warrants generally are concerned, of course, many crown counsels are consulted. In this particular case, Mr. Renwick, I know very little about the circumstances. Mr. McLeod, the director of the criminal law office is much more apprised of the facts than I am and I will ask Mr. McLeod to answer your questions to the extent that he has relevant information at the present time.

Mr. McLeod: I don't know that I can answer all of your questions as fully as I would like to today, Mr. Renwick, but I will do as much as I can.

First of all, with respect to your statement, as part of your question, that the information on which a search warrant is obtained has always been a matter of public record, I think that has to be refined a little in that there are, as I'm sure you are aware, distinctions between public documents which are public in the sense that everyone has access to them and documents which are public records in the sense that they are created in the performance of a public duty. That distinction was very much the subject of argument in the McIntyre case in the Supreme Court of Canada.

Whether the general public and the press should have access is one question. Whether the accused should have access is perhaps another. Whether the third party whose premises are searched should have access, as distinct from the accused, is yet another question; and whether counsel should have access is also a question. There are several different questions with refinements.

Your first question was, was the process followed here? To the best of my knowledge at the present time, it was. I don't have as many particulars of it as I would like to have yet because I haven't been that directly involved. I will perhaps modify that answer if there is any change, if I learn anything in the upcoming days with respect to it.

With respect to the question of will they be made available to the public, the procedure that has been followed since the judgement of the Supreme Court of Canada in the McIntyre case is that, generally speaking, the rule is on the basis of the McIntyre decision, the public has a right of access. However, on the basis of a portion of Mr. Justice Dixon's majority judgement, there are cases where public access is not in the interests of the administration of justice,

in which event the court can order that access should not be granted.

To facilitate putting that principle into operation, the justices of the peace are, on occasion, notified by the crown that in the event that anyone seeks access, they are to refrain temporarily from giving access in order to permit the crown to make submissions as to whether or not there should be access. That is what occurred in this case.

We are currently in the process of determining, both by way of the crown attorney's office in Etobicoke and by way of our counsel at 18 King Street, whether or not this is an appropriate place for the crown to make such a motion before the presiding justice of the peace.

In the event that there is an application for access by any interested member of the public, the crown will be prepared as quickly as possible to advise whether or not it seeks to have access denied or in any way limited.

With respect to your third question relating to Mr. Le Couvie, I am not in a position to be able to answer that today. Whether we will be in the immediate short run is a function of perhaps examining in more detail the existing investigation and determining whether or not it's proper to comment on it publicly at this time.

Mr. Renwick: Who is advising people with respect to the search warrants?

Mr. McLeod: With respect to the question of what steps, if any, would be taken by the crown in the immediate future, Mr. Matusiak, the deputy crown in Etobicoke, is the crown attorney who has been involved in the case up to this point and will continue to be. In addition, one of our lawyers at 18 King Street, Mr. Casey Hill, who is quite experienced in the law in the area of search warrants, will be assisting Mr. Matusiak.

Mr. Renwick: Who advised the police with respect to the issuance of these five search warrants?

Mr. McLeod: I can't tell you who, if anyone, advised them. The practice for a long time has been that the onus lies primarily with the police to determine whether or not they require advice as to the content of the information to obtain the search warrant.

I'm sorry, I just don't know at this stage whether any of the police officers involved got advice from Mr. Matusiak or any of his assistants before they proceeded with the applications.

Mr. Renwick: My next question is totally neutral. I am not making any allegations, but I want to ask the obvious question.

I trust that you would look at the process by which those warrants were issued to make absolutely certain that there were no warrants issued en blanc to be filled in at some later date. Again, I emphasize that this is a neutral question. I just want to make quite certain that since, as I understand it, the justice of the peace has been on leave since December 10, and if he signed all of them, as I understand is the case, that the informations were all provided and that all of the details were completed in those search warrants at the time of their original issue.

Mr. McLeod: I have no information of any kind to suggest that anything such as the signing of warrants en blanc or issuing of warrants en blanc would ever take place.

Mr. Renwick: I would also like to have the answer to the question of who advised the police with respect to the issuance of those warrants. Perhaps at some point, sir, you could let me have the answers to those questions.

Mr. G. I. Miller: I have a question, as far as justice is concerned, on a case that took place in Caledonia with the murder of a lady I knew quite well and whom the community really respected. According to the October 21 issue of the Caledonia paper, This Week, a local lawyer speculated that the youths involved would be perhaps tried in the adult court rather than the family court.

4:20 p.m.

I think the Attorney General has received a couple of letters, one from the town of Haldimand dated November 19 and asking him for the address of Steven Howarth, the crown attorney, in care of the courthouse, Cayuga. They are extremely concerned that there is a possibility that these persons charged in the recent murder of an elderly woman in Caledonia may be tried in juvenile court. It is their belief and it is the feeling expressed to them by members of the community that this crime was not of the type normally associated with juveniles and the sentencing power under the Juvenile Delinquents Act reflect this.

Would the Attorney General care to comment on that?

Hon. Mr. McMurtry: The deceased's name again is?

Mr. G. I. Miller: Dorothy Lang.

Hon. Mr. McMurtry: My information at the moment is that we are certainly attempting to have this case tried in adult court. That is the best information I have at the present time.

Of course the ultimate decision, as you can appreciate, is not ours. It is the court's decision that will prevail.

Mr. G. I. Miller: I suppose I know that you cannot be judge, and perhaps it is an issue, but I think the community really feels strongly on whether justice is going to be carried out in this case. If it was the children murdered or someone—

Hon. Mr. McMurtry: I do understand the shock and outrage of the community with respect to this terrible crime, and I have had some correspondence from members of the community. I may be mistaken, but my recollection is that our crown attorney's office is seeking to have these juveniles tried in adult court, and that will be the decision of the courts.

As you quite properly point out, each individual accused is entitled to the overall presumption in law that exists of innocence until his guilt is established beyond a reasonable doubt. I would like to assure you that this matter will be prosecuted very vigorously and, of course, fairly.

I have no information to assist me as to why members of the community would think that this matter is not going to be treated with the utmost seriousness that it deserves. I do not know why there is that concern. I think it is more related to the shock and outrage with respect to this very terrible crime.

Mr. G. I. Miller: Thank you very much, Mr. Chairman. I think that is a satisfactory answer.

Mr. Breithaupt: A number of things, Mr. Chairman. I believe we have three or four minutes left.

First of all, could the Attorney General undertake to get back to me on Monday with respect to the letters I have sent to him concerning the matter raised with me by Mrs. Victoria Belska? This is with respect to the availability to her of a portion of a tape of her examination for discovery in a matter and her apparent view that—

Hon. Mr. McMurtry: Oh yes, I just signed the letter yesterday.

Mr. Breithaupt: Good. All right, then I will not use any more time on that matter. I look forward to receiving that letter and perhaps dealing with the matter further.

Second, is there anything currently going on with respect to the interest shown in television procedures developing in the courts? Does your ministry have any ongoing view or involvement in the interest that has been shown with respect

to a balanced access of television to the courts? How is that being matured?

Hon. Mr. McMurtry: There is a great deal of interest in this subject. There is a bench and bar subcommittee in which the Chief Justice and the Deputy Attorney General sit. The matter has been the subject of a considerable amount of discussion. I spoke to the Chief Justice as recently as this week about the matter, and he advised me that he is seeking some additional information from chief justices in the United States, in areas where this has been tried, to learn what he can from the standpoint of the judiciary.

We do recognize that this is probably a wave of the future and this is our thinking at the present time, but of course it is something that has to be handled with a considerable amount of care in order to maintain the basic integrity of the process.

The recent television series in which all three major networks were involved was, I think, quite successful. I know that the Canadian Broadcasting Corp. has been considering a project with respect to following a particular case, a major trial, through the courts right from the beginning to the end.

We, together with the Chief Justice, have given our support, at least in principle, to that project. The matter therefore is moving along, but with the degree of caution that one would expect us to exercise in this area in order to, as I said, preserve the fundamental integrity of the process.

As you know, one of the basic issues is the question of—well, there are a number of issues that have been written about. I do not think that we have time to discuss them now, but I am sure that it is something we can continue to talk about. It is a very interesting issue.

Mr. Breithaupt: Perhaps I could just take one more moment, Mr. Chairman, to raise one other issue of the many which one could raise in the course of these estimates.

The matter is with respect to recent correspondence we have received concerning post-judgement interest. I am wondering if the Attorney General is familiar with the views of those in the collection agency side of our community with respect to those procedures in the small claims courts where, of course, a post-judgement interest, which is allowed in county court, does not prevail.

Second, a concern has been expressed to us about a recent ruling which apparently allows only solicitors and individuals to file executions

in county court. Since, obviously, credit bureaus and other agencies fall in neither of those categories, the inability to file executions has caused them much inconvenience and, no doubt, it will cause greater expense if solicitors have to be employed particularly to deal with this sort of matter.

I am wondering if the Attorney General can report on those two themes, because I would think they are both worthy of some particular consideration.

Hon. Mr. McMurtry: As you know, the Small Claims Courts Act legislation we have inherited is relatively ancient and requires a complete overhaul. This will be part of our new courts of justice act.

Mr. Breithaupt: Will you be including the theme of post-judgement interests?

Hon. Mr. McMurtry: Yes, we will be including the matter of post-judgement interests.

Mr. Breithaupt: And on the other matter with respect to the filing of executions and that directive?

Hon. Mr. McMurtry: My understanding, and I will be corrected if I am mistaken of course, is that we have always required that lawyers file writs of execution in the sheriff's office because it is part of the court process. That is my understanding.

Mr. Roy: Or the individuals themselves.

Hon. Mr. McMurtry: Or the individuals themselves.

Mr. Breithaupt: But it would appear that the recent directive—

Hon. Mr. McMurtry: I think it is necessary—and some of this relates back to my own practice—for someone to be on record, and that could be the litigant himself, you are quite right.

The issue here is whether agents of finance companies and what not should be able—

4:30 p.m.

Mr. Breithaupt: Often the fact is that it apparently bars an officer of a limited company from giving those instructions.

Hon. Mr. McMurtry: It is my understanding that the sheriff's office requires someone of record who is in a position to give the sheriff's office up to date information with respect to seizures and what not. Perhaps Mr. McLoughlin—

Mr. Breithaupt: Yet the prevention of that approach that has occurred in the past may well lead to greater and possibly unnecessary expense in dealing with these matters in the sheriff's office.

Hon. Mr. McMurtry: The director of courts administration, Mr. Brad McLoughlin, is here and his senior colleague, Mr. Ron Schurman. There is an issue, I think, with respect to the registration of an execution as to whether a company is a person within the legislation.

Mr. Breithaupt: Or whether a director of a limited company can make that same declaration that either a solicitor or an individual's claim can now do.

It just seems to me, from the variety of correspondence initiated by credit bureaus particularly, that this is of concern and it seems they may well be correct when they say that unnecessary expenses are going to have to be paid for a relatively simple and direct procedure. Surely, we would hope to avoid those expenses and allow the system to proceed as expeditiously as possible.

Mr. Chairman: Do you wish to respond to that?

Mr. McLoughlin: Yes. We can examine that, but unfortunately the law is that it is either the individual or a solicitor at this time. We appreciate the position that many agencies are put in at the present time because of this, but all we can do is examine it.

Mr. Breithaupt: Is this again something that might be considered at the time of the courts of justice act, or will there be other amendments required in other areas as well?

Mr. McLoughlin: Yes. We will certainly examine it. We are well aware of the problem. It has been brought very vividly to our attention by a number of groups and associations. We certainly will look into it and will see what we can do. We realize it does wreak a hardship on them, but unfortunately at the present time there is nothing we can do about it, other than adhere to what is the law in that particular area.

Mr. Chairman: Thank you, Mr. Breithaupt.

Vote 1406 agreed to.

The committee moved to other business at 4:33 p.m.

The committee adjourned at 4:39 p.m.

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Legislature of Ontario Debates

Official Report (Hansard)

Standing Committee on Administration of Justice

Estimates, Ministry of the Attorney General

Second Session, Thirty-Second Parliament

Friday, December 17, 1982

Speaker: Honourable John M. Turner

Clerk: Roderick Lewis, QC

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, December 17, 1982

The committee met at 11:23 a.m. in room 151.

After other business:

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(concluded)

Mr. Chairman: I have taken advice and there is nothing prohibiting the committee from continuing on with the estimates in the absence of the Attorney General. The assistant Attorney General is here and is willing to take his place. I am advised that the Attorney General is presenting his bill, but expects to be with us before very long.

Mr. Mitchell: Mr. Chairman, to be very quick and concise, the Attorney General is presenting some legislation in the House which has been agreed to by the House leaders. The House leaders had also agreed that the justice committee would be sitting today to complete the Attorney General's estimates.

Normally this committee would allow a parliamentary assistant to represent the minister. In this case, the minister does not have one. I would move that we allow the Deputy Attorney General to proceed with the estimates.

Mr. Chairman: Thank you. I called him the assistant Attorney General. Mr. Dick knows what he is even if I don't. Is that satisfactory to the committee?

Mr. Elston: In fairness, he is in a transitional phase right now. He may have some problems recognizing his true duties—

Mr. Chairman: I thought you had a serious question.

Mr. Elston: I am serious. It is a very serious problem.

Mr. Chairman: All those in favour of carrying on with the Attorney General's estimates at this time?

Motion agreed to.

Mr. Chairman: There are seven members present.

Gentlemen, do not run away at one o'clock. We have to deal with Bill 198. We are going to have to make some serious decisions to pass the bill.

On vote 1407, administrative tribunals program; item 1, assessment review court:

Mr. Chairman: When we left last day, we were commencing vote 1407, item 1. I advise Messrs. Renwick and Breithaupt, who are now walking into the room, that we are just going on the record with the Attorney General's estimates at vote 1407, item 1. The critics are now in the room, and the Deputy Attorney General is holding the fort for the Attorney General until he arrives.

Interjection: He is on his way.

Mr. Chairman: Is there anything the critics wish to ask Mr. Dick before the Attorney General arrives?

Mr. Breithaupt: We have just completed second reading of Bill 196 and the amendments have been accepted, which is even more encouraging. We have just this time left.

I know Mr. Renwick wants to talk particularly about the assessment review court. I am quite satisfied that matter can go ahead directly. One particular item I wanted to discuss with the Attorney General was the Law Society of Upper Canada. It might be an even happier occasion because the Deputy Attorney General will be somewhat involved with these matters in the time to come. That is the only matter I need to raise because the time is not there for all of these areas, interesting though each one of them is.

If Mr. Renwick wants to go ahead with the assessment review court, I am content not to speak on any of the other subvotes.

Mr. Renwick: I appreciate what my friend has said about it, and I do not intend to be long. Perhaps the shorter I speak, the more effective the presentation may be. I am very concerned because I am looking forward to our work on the select committee on agriculture.

Mr. Watson: I am too, yes.

Mr. Renwick: The recent assessment changes made in my riding and in other parts of the city of Toronto have focused my attention on an area on which I am neither an expert nor particularly knowledgeable, other than as a layman, namely, the process of assessment review in the courts.

Apart altogether from the problems which

have been created for the constituents I represent, one or two of the specific cases which have gone to the assessment review court have again brought to my attention the need for the Attorney General to look carefully at the assessment review court process—not the principles so far as the Ministry of Revenue is concerned about assessment and how those things happen, but the actual process in the court.

First, we amended the Assessment Act and removed the county court from the process of appeal. It now goes directly to the Ontario Municipal Board. I understand there are some 60,000 assessment appeals in the province and that it will require the appointment of an additional 18 members of the Ontario Municipal Board on some kind of a basis to deal with those appeals.

I did not believe the figures when I heard them, but I believe they are an accurate statement of what would be required. I do not know whether it is intended to appoint members of the Ontario Municipal Board, maybe on a contract basis for three or four years or whatever it is, to deal with those matters. That is a serious problem, however, and I would like the Attorney General to address those matters.

Second, I think a serious look should be taken at the onus provision, which requires the taxpayer to bear the onus of proving in the court that his assessment should not have been increased. That is embedded in the law and has the final sanction of the Supreme Court of Canada re-emphasizing that question.

12:20 p.m.

The assessor comes around and wanders up and down the street and looks at the outside of the house on Frizzell Avenue in the riding of Riverdale and decides the assessment should be increased by X number of dollars. Then the taxpayer has got to come to the court and has the very heavy burden of saying that the assessor is wrong. I think that is a very unfair burden because the ordinary taxpayer does not think about his assessment and being a specialist at it until he actually gets to court.

I think that is extremely important. The initial reform must be a question of saying that the assessor, having made the change in the assessment, should be the one to establish the *prima facie* case that his review of the assessment and his increase is justified. Then the taxpayer knows the case he has to meet in the court.

I believe that simple reform would lead to the assessor having to give almost a written statement of reasons for the increase, when the

notice of assessment is given. That would mean the ordinary taxpayer would know the case he or she has to meet when they go to court.

Third, the court rules should require that no taxpayer be faced with an assessment increase unless the assessment notice states that the assessment has been increased over the assessment for the preceding year.

There are people who are sufficiently orderly about their personal affairs—and I excuse myself from that category—who will know that when the assessment notice arrives, one should go to file X in one's filing cabinet and pick out last year's assessment and make the comparison to find out whether or not there has been a change in the assessment. Most people do not. They get the assessment notice and say, "Well, thank God that is not the tax bill," and they throw it away. So we had to pass a bill in order to provide by statute for the appeals of those persons who had failed to meet their appeal.

It is funny that these things come to the surface. One thinks it is so reasonable to say that if the assessment notice varies from the preceding year, it should state on the notice, "Your assessment has been increased by so many dollars," or whatever it is, so he is alerted right away to what the problem is. I think it should include a statement of it.

I do not think the passive—and I use this with respect as always—role played by those who are sitting in the assessment courts should be quite as passive as it is. I also think—and I reiterated this upstairs—that the riding of Riverdale seems to be unique.

If you have a small claim, you have to go to Scarborough rather than to College and Yonge Streets, and if you have an assessment appeal, you have got to go to the west end of the city, out to Montrose Avenue, to have your assessment heard. The same thing applies again. I happen to think things should be made a little more convenient for the residents of Riverdale. Some people can say Montrose Avenue is not all that far. If you live east of the Don Valley Parkway, Montrose Avenue is a considerable distance from the Metropolitan Toronto area. All of the appeals are being held out there.

This touches upon the question I raised in the assembly with the Minister of Revenue (Mr. Ashe) very clearly and very specifically. I was quite astounded. He said it would be done and I could not even dream up a supplementary question to ask because he agreed with it, which was most unusual.

A constituent of mine went to the Montrose

court and took the trouble to call the assessment office to find out what comparisons he was going to be faced with in the court. He had been told that there were three selected residences which had been assessed, and those were the benchmark against which the assessment was being changed. It was a very significant increase in the amount of the assessment.

My constituent went out and got five what she believed to be comparable homes, appeared in the court and was faced with a statistical statement that there were 200 assessments, which in statistical terms is called the reference area or whatever it is, from which the assessment to the market value was being used to establish the percentage by which the whole assessment had been increased. She had the temerity to ask the court if she could be provided with that information and was told it was confidential and she could not be provided with it. Fortunately, she called me and I was able to ask the question that afternoon. The Minister of Revenue said, "Of course, it can be provided."

She ultimately did get it, but she still had a problem going to the assessment office to get the 200 units that were the basis to find out where they were and to try to make some establishment. She has compiled a booklet of the things which she tried in developing her case before the court. She came away with the sense that the judge's role was very passive—that is not criticism; that is the way it has developed—and that there was no sort of saying, "look there is some kind of basic fairness about these matters."

I am sure there are other procedural matters and I do not want to go on any further, but the process needs to be really looked at as to what taxpayers are entitled to receive as the case that has to be dealt with when they arrive in the court. There has to be a very real understanding. Anyone knows that there is nothing more divisive to the street you live on than being placed in the invidious position of searching out your neighbour's assessment and using your neighbour's assessment to draw comparisons and say, "Well, my assessment should or should not be up." It is very unsettling in any community.

In a riding such as Riverdale, which has relatively narrow lots, when there are assessments on the street and somebody objects, it causes immense tension when you say, "I am using my neighbour as an example." I know that the member for Lakeshore (Mr. Kolyn) and the member for Parry Sound (Mr. Eves) would

agree with me about that problem. Next to how much money you earn, tampering with somebody's assessment is about the most horrendous thing that can happen on a street.

Somewhere within that framework, I am asking the Attorney General to have somebody really look at that process from stage one to stage three. Again, I emphasize that I am not asking the Attorney General to become the person who compiles the manual on which assessments are made. I am just talking about the assessment process and the sense that an individual member of the community would have when he appears before that court. Those are very offhand remarks, but that was why I asked specifically to speak to this matter.

12:30 p.m.

Hon. Mr. McMurtry: Thank you Mr. Renwick. Mr. Brad Bowlby, QC, the chairman of the assessment review court is here and I am sure listened to your comments with great interest. Dealing first with the process as I understand it, it seems to me, and of course this touches very directly on the responsibilities of the Ministry of Revenue, as you well know, on the original assessment notice, you are told where you can go to obtain full particulars in so far as obtaining disclosure in relation to the case that you have to meet where there is a change in the assessment in an upward direction. Some explanatory booklets that I have seen from that ministry are helpful, but all of this is something that should be continually reviewed. That is one aspect of it.

The other aspect is the onus. That is a more difficult issue. It seems to me at first blush, and this is something I would like to reflect on more, that there is some consistency, in so far as the onus is concerned, with respect to the onus on a party in a civil action. I think this is the theory behind it. How supportable that is I am prepared to continue to reflect upon. The theory is that if somebody who seeks to obtain a change alleging an error—in this case it is an assessment—there may be an error in so far as civil trials are concerned. We are dealing with the whole parameter of human problems.

Whether or not there is some logical consistency, someone who wishes to sue me, alleging an error in judgement, has an onus of proof upon him to establish on the balance of probabilities that that error has been made. Similarly, so far as the assessment review court is concerned, there is an onus of establishing that an error has been made. Again, it is an interesting observation that you have made, and it is

certainly something that is worthy of further thought rather than an instantaneous reaction.

I guess the issue of accessibility of the assessment review courts is again a question of resources and what we can do to make these courts more accessible. I know that people have to travel significant distances throughout the Metropolitan Toronto area. I am not just talking about Metropolitan Toronto but the surrounding boroughs and communities.

I understand that we have quite a backlog that will be facing the Ontario Municipal Board, the assessment appeal branch of the board, and I think our legislation is being proclaimed as of January 1. The number of appeals—you mentioned 60,000?

Mr. Renwick: Sixty thousand is the figure that I understood.

Hon. Mr. McMurtry: I think that is consistent with what I have heard. We also have our distinguished chairman of the Ontario Municipal Board with us, Mr. Henry Stewart. I think as recently as yesterday you were suggesting that that figure seemed to—

Mr. Stewart: Between 60,000 and 65,000 and growing every day.

Mr. Chairman: Would you repeat that?

Hon. Mr. McMurtry: Yes. Mr. Renwick's information is correct. How quickly or how many additional people will be able to get it on stream is something we are working on, but the challenge for the board is formidable.

Mr. Renwick: My friend Mr. Lawlor probably would welcome a contractual engagement for a short term.

Hon. Mr. McMurtry: We are concerned about the backlog, but knowing the efficiency with which the Ontario Municipal Board addresses its many challenges from day to day, we know that it is a task with which it will—

Mr. Renwick: Is the figure of 18 about right for the additional appointments or contractual arrangements? Is that roughly in the same ball park as the 60,000?

Mr. Stewart: Nineteen.

Mr. Renwick: Oh, I always like to be a little low.

Hon. Mr. McMurtry: You are well informed. It is just an indication of the extent to which the concept of freedom of information is entrenched in this government with or without legislation.

Mr. Renwick: I may say it cost me the price of a lunch.

Mr. Chairman: Gentlemen, do we have any more comments?

Mr. Renwick: May I just make a very brief one on the onus question. I do not want anybody to misunderstand. Everybody knows without being a lawyer the onus shifts during the course of the situation and so on. In assessment appeals I gather it is a three-step operation. The onus is on the taxpayer, then to shift that onus to the assessor, there is sort of an intermediate step, and then the final onus is back on the taxpayer.

It seems to me that three-step operation is not analogous really to somebody alleging a claim against me. Most times if somebody says, "Jim Renwick, you owe me \$5,000," I know a lot of the information about the circumstances surrounding that claim when I start on it. But to suddenly have an arbitrary change in the assessed value of a house I have resided in for 10 or 15 years, without any explanation other than somebody saying if you happen to notice it is an increase, which is a problem in the first place, you have 15 days.

If you want to find out what it is about, there is a place you can go, and when you go to the place you do not get any useful information and you are faced with this relatively sophisticated process in the court. I am not suggesting that there should be no onus. All I am saying is that the stages of that onus and the shifting burden of it should be altered to provide a higher degree of equity to the taxpayer. I would hope that these brief comments would start some kind of a process about looking at the actual process in the court.

Hon. Mr. McMurtry: Thank you. Just one other point I would like to add. The ministry's director of communication, Mr. David Allen, has just reminded me that we have been working on an information booklet similar to what we have provided in the small claims court, which will be available in the spring to assist people who wish to appeal their assessments.

Mr. Renwick: The city of Toronto had a couple of useful seminars or forums and also has a little booklet. There has been some movement; it is up front and centre in the city, of course, because of these spot reassessments which took place.

Mr. Elston: May I make a couple of comments on that very same matter lest people get the feeling that this particular problem is one that is faced only in urban centres? One of my constituents has gone through this process on two occasions following up one year after the

other. I think he has run into the most difficult time getting information as to how the assessment is actually carried out in its real form in the field, not being able to get the information, as Mr. Renwick said earlier.

In addition to that, where he has gone to the hearing and requested that reasons be given to him, either in favour of his presentation or against, he has really been given no reasons at all with which he can then advance towards the next step of the process. It seems to me that where a person is neither given ease of access to the case that he has to meet, nor the reasons for dismissal of his case, that he is suffering under a great disadvantage as this constituent, Mr. Ireland, has.

12:40 p.m.

Hon. Mr. McMurtry: I wonder if I might just interject here for a moment, Mr. Chairman. Mr. Bowlby, as I mentioned a moment ago is here. If he were to come forward, depending on the wishes of the committee, he may be of assistance to you, Mr. Elston.

Mr. Renwick: Mr. Bowlby and I attended the University of Toronto Schools together.

Mr. Bowlby: That was a long time ago.

Mr. Chairman: Sit down, Mr. Bowlby, please.

Mr. Bowlby: Thank you very much, Mr. Chairman.

Mr. Elston: Mr. Bowlby, you probably heard some of the remarks I made concerning the attempts that have been made at disclosure of the case. Mr. Renwick also mentioned that.

I also mentioned disclosures of reasons. If the court decides that the taxpayer's information is not of as much assistance as the assessor's information, the taxpayer then falls under a very great hardship if he wishes to take the decision and move to the next step of appeal. He doesn't know why his information isn't as valid as that of the assessor's.

In this particular case, the individual went out and got properties which he thought were comparable, which included a farm lot right next door and several others. He felt the assessor didn't take the time to actually review the buildings he was assessing other than from the outside, so to speak.

My constituent was living indoors, so he felt he would probably know a little bit more about whether this is finished or that is finished. He feels very alienated from the process, very frustrated with it. As an intelligent person, he has gone through the act with a fine tooth comb to see where he can request and require that

information be provided to him. Even though he comes up with sections that seem to indicate he can request written reasons at the beginning of a hearing, he still has not been provided with them.

He has to take about four or five days off work to put his case together each time he goes to the assessment review court. It is money out of his pocket. Even if he is partially successful, he can never be compensated for that.

That is a difficult problem for each of our taxpayers. In his case, he would have to drive 65 to 70 miles to get the information, which would not be any more than five or 10 miles away from the urban centre. It is a substantial out-of-pocket expense and there is no way he can get that back unless he is more than substantially entitled to a cutback in his assessment.

Mr. Bowlby: There is no provision in the Assessment Act to allow for the costs. Not even the Assessment Review Court Act has a regulation allowing for costs to compensate for the individual who has been put out. The distances are horrendous in this province from time to time as you all know.

The members of the court are under constant review. There are instruction seminars two days or more in the year—not all at the same time—to review the procedures to handle cases to ensure a uniform and consistent approach.

They are well versed in the Assessment Act provisions and it is constantly stressed that adjournments are not to be unreasonably withheld if a taxpayer is caught by surprise and needs time to fortify his case. The members are constantly being reminded and requests for written reasons must be followed through. Our court records provide for that.

When those records are returned to the regional offices, they are segregated and we are advised of them at my office in Toronto. An index of all requests for written reasons is monitored there. We do not edit the reasons for decisions but we do for format, so they conform with the requirements of the Assessment Act, the assessors and the municipal offices, so they are talking about the same property each time.

This is a problem. The evidence is brought to the hearing and quite a number of hearing days have been held during the past year—some 2,700 so far this year. It's hard to keep track of every single case that comes up. Unless the member has been alerted by a request from the taxpayer or the assessor or the municipality, if present, of written reasons, the taxpayer still has up to the last date to appeal to the next level to

request those reasons. This is constantly being brought home to our members so they do not overlook that.

Mr. Elston: Is there any movement at all to help the taxpayer? I have had two or three occasions to hear from people who have gone to the review court. One situation was a Legion executive in my riding. When they went in to discuss a commercial reassessment, they were faced with statistics that came out of a computer somewhere that they weren't able to get access to.

It seems there is an ever-greater reliance upon that data, rather than taking into consideration some of the physical complaints the individual owner or owners of the place have. It seems the court is looking more at the numbers game than at some of the physical information the taxpayer can provide. Again, it provides a certain degree of frustration.

Mr. Bowlby: We're dealing with a tremendous number of complaints in a year and it's human nature to want to get on and get them out of the way. The members are instructed to allow the time necessary for a proper, fair hearing.

The Assessment Act provides that the assessor outlines the nature of the assessment and the complainant his case. That's reinforced in our regulation. In many cases, the assessor outlines the whole basis of the assessment, not just the bare outline, to give the taxpayer the story of what he is faced with. This is constantly under review by the members.

Mr. Elston: I have some other questions, but perhaps I can address a letter to you later on and save some time for some other items here.

Mr. Charlton: Mr. Chairman, I wonder if Mr. Bowlby could just stay for a few minutes. He may want to comment on some of the things I have to say. At least, I would like to be sure he hears them and the minister as well.

The criticisms I am going to make aren't all directed at the assessment review court itself. It's sort of an overall problem with the assessment function. There are some inconsistencies that occur in the appeal of assessments. Some of them are related to the approach the Ministry of Revenue, the assessment branch, takes to appeals, and some of them are related to the way in which some of the chairmen make their decisions.

One of the problems is that the assessment division seems to have—I should point out that I used to work in that field—two criteria when it comes to dealing with appeals. If they get an appeal and, in looking at that particular assess-

ment, they discover that there is an error that is site specific, property specific—in other words, if there is an error in the actual calculation of an assessment or an individual property—they will tend to go into court and make a recommendation for a reduction in that assessment. Mr. Bowlby can attest to a fairly substantial number of assessors coming in with recommendations for reductions where they have come to a prior agreement with the appellant.

On the other hand, there may be an error, but not an error in the specific calculation of the property. For example, in a 10-block strip of commercial development, the assessment office has gone in and tried to determine the values on that street. There has been an error in the analysis of the market on that street and it affects a fairly substantial number of properties.

The tendency on the part of the assessors will be to go into the assessment review board and try to defend their assessments because it affects more than just the appellant who happens to be there with an appeal. Those are the kinds of appeals where we're getting many inconsistent decisions. It's not all the fault of the assessment review court because of the position the assessors are taking.

12:50 p.m.

The assessment review court tends to have to view the assessors as expert witnesses. If a group of small business appellants come in and they don't have the expertise they should have, you quite often don't get a decision which reflects the reality of the market in that area, although it should.

We had a presentation just prior to these estimates from Mr. Poole, who has been handling appeals. I have handled many myself and have seen the kinds of inconsistent decisions. As I suggest, it is not a straight out criticism of the ARC; it is a combined criticism.

There are some functions going on that in reality shouldn't. Once an assessment roll is returned, if the situation affects a large number of properties there is a tendency to defend it on the basis that this property is assessed the same as all the others along that particular area.

There is also still a tendency on the part of some of the chairmen—and there are some excellent chairmen—to go the old soft route. They will hear good presentations from the appellant and from the assessor and will have some understanding of what both have said, but because they are not sure which one is totally right, they will make a decision in the middle

somewhere. That has no relationship at all to anything that is real in the marketplace.

It was a nice gesture; the appellant got a reduction that was half of what he was asking for and the assessor only lost half of what he was trying to defend. The ultimate decision creates some problems down the road in the system for the rest of the properties that are assessed at either end of the spectrum.

Those kind of things still tend to happen, and those are the kind of things I would like to see the assessment review court try to deal with in terms of how they train and instruct their assessors. They not only have to instruct in terms of the act itself, but in terms of the market value.

They also have to be familiar with and well aware of the kinds of politics that go on in the assessment division itself, how they view appeals and how they decide when they can bring in a recommendation for a reduction because they have made an error and they feel they have to defend assessments even though there may be an error in market analysis.

Those are very important areas that have to be dealt with because they create the inconsistencies in the system. The inconsistent decisions snowball and create new problems.

Hon. Mr. McMurtry: Thank you very much.

Mr. Bowlby: I must not comment further at present because this is under constant review with our members. I know these things happen and we try to smoke them out or try to find them out before they arise.

Mr. Chairman: Are there any other questions on anything or on any of the areas of vote 1407? I would like to carry those and then Mr. Breithaupt has a question.

Item 1 agreed to.

Items 2 to 6, inclusive, agreed to.

Hon. Mr. McMurtry: I should like to say, Mr. Chairman, in the presence of the two chairmen here, that Mr. Bowlby took over the assessment review court at a very challenging point in its history and I have been very impressed with the success he has had in administering a very challenging, far-flung and complex operation.

Mr. Henry Stewart, the chairman of the Ontario Municipal Board, also took over his responsibilities during my tenure at a particularly challenging time. I think it is important for me to take this opportunity to acknowledge publicly, not only the commitment of these two gentlemen and their dedication, but also the very effective manner in which they have dis-

charged their responsibilities in the interests of all the citizens of this province.

They will recognize the challenges and the problems that still have to be addressed, but I think we are very fortunate to have people of this quality serving in these very important positions.

Mr. Breithaupt: I would agree, Mr. Chairman, on that matter. Certainly the fact that we have not had the opportunity in the estimates to discuss the functions of the Criminal Injuries Compensation Board or of the Ontario Municipal Board or the other components of this vote no way discounts the importance and the contribution which the personnel with these duties are performing for the province.

As in many other things, one or two issues in an estimates time become the issues of the day and take much time with the unfortunate result that we cannot discuss as thoroughly as we might wish many of the other aspects. Our lack of opportunity to discuss these should in no way be considered as disrespectful or ignoring the valuable work which is being accomplished by these boards and commissions that make up vote 1407.

Mr. Chairman: Thank you, Mr. Breithaupt.

Mr. Breithaupt: There is one other theme that I believe it is most important for us to discuss in the estimates, and that is the ongoing concerns which a number of us have as to the development and future of the Law Society of Upper Canada.

It is particularly appropriate, I believe, to spend our remaining few minutes on this subject because our Deputy Attorney General will be moving on to a position of undertreasurer of the law society at a time when there are serious strains and problems developing in the profession of which a number of us are members.

I hasten to add that I have not been in active practice for seven years, so I am probably not much of a threat to those people who are. Indeed, it is the same length of time that the Attorney General has been out of active practice, so that he may feel to a degree the same way.

Hon. Mr. McMurtry: Some of them feel that we are a threat in our capacity as legislators.

Mr. Breithaupt: We may indeed do much more damage here than we would have been doing on a day-to-day basis in active practice. I am concerned, and perhaps I can do nothing more than read a number of headlines from a

series of recent articles that call into question many aspects of our profession.

Here is one: "Too Many Lawyers and Too Little Business." Another one: "Ontario Lawyers Worst Hit by Recession." A third: "Lawyers Disciplined for Theft up 500 Per Cent." "Insurers Refuse Coverage of Lawyers for Negligence" "Wayward Lawyers Tarnish Image of Legal Profession." "Character of Legal Profession Undergoing Dramatic Change." And so it goes. "Law Grads Multiply but Schools Refuse to Limit Admissions." "Rules Urged for Specialist Lawyers." "Limit New Colleagues, Lawyers in Ontario Say." "Three Hundred Lawyers Suspended from Practice."

Each of these articles deals with aspects that I know are going to particularly tax the abilities of the new undertreasurer and of the volunteers that by standing for election as benchers attempt to grapple with and will over the next several years. The whole thing, though, seems to come together in last week's London Free Press.

I would hope that every bencher of the law society would get a copy of this first section of last Saturday's London Free Press. The two front page articles are headed: "Lawyer Jailed Seven Years for Theft" and "Most Tragic of Victims: Widow, Daughter Robbed of Inheritance."

The whole of the inside first two pages deal with the activities, the involvement and the victims of Stuart Brister. There is an article on the number of unscrupulous lawyers increasing and some comments made about the loss which people have suffered from the actions of this one person. Unfortunately, there is one lengthy article which is headed: "Nobody Really Cares."

1 p.m.

Our profession, the one that the Attorney General, the chairman of this committee, my colleague the member for Riverdale (Mr. Renwick), my colleague Mr. Elston and I share, we have all brought to this profession a variety of interests, background, experience and practice.

Over the the 20 years that I have been a member of the Law Society of Upper Canada, I do not think that I have felt as unsettled about the future of our profession as I do now. I talked to those still in active practice in Kitchener, some practising on their own, others in firms of two or three, others in some of the larger firms in our county town.

There is this feeling of uncertainty, that you can't take a person's undertaking any more. Whatever are these new younger lawyers doing, as the traditional real estate and commercial

work is much less? You are reminded of the theme that underemployed lawyers get into mischief. This whole matter seems to have come to a head when you look at page after page of comments about this London situation.

You even consider the result of the sentence. The headline might be a comfort to people. "Lawyer Jailed Seven Years for Theft," but in the article it says he will be eligible for full parole in 28 months. I don't know if that is good or bad, but it isn't the expectation perhaps of the citizens who have been bilked by this particular person.

Does a sentence mean anything these days? Not necessarily the inconsistency of how sentences may somewhat be applied, because that is a burden that the provincial judges, particularly in those kinds of areas, are constantly grappling with. But where is society's interest? Where is the recompense we should expect? When does a sentence mean a sentence?

Yes, you could say this man has destroyed his professional career, but heavens, from the comments that are made in the article, he did that a dozen years ago and came back into active practice, and here he is at it again. The end result in money, the total amount as I recall from the articles, was more than \$523,000.

When you see a widow and her daughter being stung for more than \$100,000, amounts beyond which the law society limits will not protect them, there just seems to be something wrong. Are we at the stage where lawyers are not going to be allowed to practise on their own?

Are we going to require two signatures on every trust cheque, and if you practise alone you had better have an arrangement with the person who works next door? Are we going to see more spot checking done? Are the complaints going to be handled more thoroughly?

Is this a burden that our profession now has to have in the same way that the travel agents or any other group must require bonding for dealings in financial matters to not have the opportunity? There are so many things, and maybe it says it all in this issue of the London Free Press that ties together so many troubling comments about the future of our profession.

Mr. Chairman: Thank you, Mr. Breithaupt. We are through at 1:02 p.m. . . I was going to speak slightly, having practised in Woodstock, closer to London by 40 miles than Kitchener. I believe on the matter you have mentioned that the law society is not only remiss but totally negligent. In all the meaning of the word

"negligence" that a solicitor can use, the Law Society is such.

Since I am also on the procedural affairs committee, I am pressing that committee to review the law society as one of the agencies, boards and commissions which it should examine in February, if this House ever sits or if that committee ever sits in February to examine the agencies, boards and commissions, notwithstanding the correspondence between the Attorney General and the clerk and chairman of that committee.

These are some of the things I intend to address, if given the opportunity, with the law society in front of us.

Mr. Breithaupt: You know the particulars of this issue more so than the rest of us. As a theme, we have to come to grips with this whole area.

Mr. Chairman: Yes. Mr. Kolyn, do you have a comment?

Mr. Kolyn: We have pretty well covered it. I would like to say there have been a lot of cases where we have been seeing a lot of lawyers being disbarred. Certainly that tarnishes a lot of reputations.

The question could be asked, when you go to law school now, why is that so much more prevalent today than, say, 20 years ago? Is it moral ethics? What drives people who know the law and know where the fine line is to veer over on it?

Mr. Chairman: I am going to carry that because we have other very serious business to touch.

Mr. Breithaupt: Perhaps the Attorney General might want to make a brief comment on this theme as to how he sees the involvement. Where does he think we are going in these matters?

Mr. Chairman: Mr. Attorney General, do you have any comments in reply?

Hon. Mr. McMurtry: Very briefly, there is no question that the law society faces some very

formidable challenges. Many of these challenges are related, I am sure, to the fact that the profession has doubled in size during the past decade. Economic pressures, of course, are also part of the problem.

I agree that those of us who are members of the profession have to work very vigilantly to maintain, indeed enhance, the credibility of the profession. There is no question but that many of these very unhappy events have done great damage to the reputation of the profession.

We all have a role to play. I have said in recent days on more than one occasion that the law society is very fortunate that the Deputy Attorney General has agreed to serve as the undertreasurer. Our great loss is their gain.

When I knew that the Deputy Attorney General was going to be leaving the government, quite frankly, I was pleased when I learned that it was going to be to the law society. Any organization will receive enormous benefits from his service, given his really quite remarkable experience in government administration. The Deputy Attorney General is as aware as anybody of the dimension of his challenge.

I would like to conclude these estimates where I started, and that is by wishing the Deputy Attorney General well with respect to the very important responsibilities he will be undertaking at the beginning of the year.

Mr. Chairman: Thank you. I believe the members of the committee second that and I am sure we will be dealing with you in future days on various topics.

Mr. Dick: Thank you.

Vote 1407 agreed to.

Mr. Chairman: This concludes the estimates of the Ministry of the Attorney General.

The committee moved to other business at 1:10 p.m.

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From the Ministry of the Attorney General:

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